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EIGHTH REPORT

The Ombudsman | Ontario

APRIL 1, 1980 - MARCH 31, 1981



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The Ombudsman | Ontario

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May 25, 1981

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Mr. Speaker:

It is with pleasure that I present the Eighth Annual Report of the Ombudsman for the period April 1, 1980 to March 31, 1981.

This report is submitted pursuant to Section 12 of The Ombudsman Act, 1975.

Yours very truly,

Donald R. Morand

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CHAPTER ONE

INTRODUCTION

I am pleased to present the Eighth Report of the Ombudsman which is also the third Report in my capacity as Ombudsman of the Province of Ontario.

In this Report I have again kept the number of detailed summaries to a minimum. This is in keeping with the stated intention outlined in my last Report which was to shorten all future annual reports while maintaining a comprehensive sampling of the complaints brought to my attention.

COMPLAINT STATISTICS

Since the inception of the Office of the Ombudsman in May of 1975, to March 31, 1981, the Office received complaints for which a total of 32,870 files were opened. A total of 31,245 files were closed since May of 1975; 12,226 (39%) of these files involved complaints which were within the jurisdiction of the Office of the Ombudsman to investigate. During this period, the Office dealt with 36,284 non-jurisdictional complaints and information requests for which no follow-up action was required and for which a file was not opened. Therefore, the total of complaints and information requests received in our Office since May of 1975 was some 69,154.

One statistic which I feel is worthy of special note is the number of files which remain open in our Office at year end compared to the same figure a year ago. As of March 31, 1980, there were 2,714 open files in our Office. As of March 31, 1981, this number has been reduced to 1,634. This represents a very substantial drop of 1,080 files in the case load of work in our Office and was achieved by hiring extra investigators and of course the dedicated work of our office staff who strive to give the citizens of Ontario prompt service. It is my view that this figure can be again decreased slightly in the ensuing year. This will remain one objective of the Office along with our continuing goal of providing prompt, courteous and effective service to the citizens of Ontario.

Another dramatic change occurred in the number of files closed in the period covered by this Report. A total of 5,083 files were closed between April 1, 1980 and March 31, 1981, which represents an increase of 428 file closings when compared with the previous fiscal year.

There were 6,182 complaints and information requests associated with the 5,083 file closings. These 6,182 cases incorporate 5,682 complaints for which the jurisdiction of the Office was determined. Approximately 63% or 3,602 of these complaints were found to be within the jurisdiction of the Ombudsman. In comparison with the previous Report, this represents an increase of 35% or 1,248 in the number of jurisdictional complaints dealt with. The remaining 2,080 complaints were found to be outside the jurisdiction of the Ombudsman.

Overall, 2,151 (2,117 jurisdictional complaints) complaints dealt with during this reporting period were resolved. The preponderance of these complaints, 2,108 (98%), coincides with situations where the Office was directly involved. The remaining 43 complaints were resolved independent of any involvement on our part. Of the 2,151 complaints, 666 were resolved in favour of the complainant. The involvement of our Office and the cooperation of the officials of the various ministries and agencies of the Province were the two most important factors contributing to the resolution of these cases. Examples of the excellent cooperation between my Office and the various Ministries are illustrated in the detailed case summaries contained within the Eighth Report. Especially worthy of note are detailed case summary numbers 8, 13, 29 and 31. On the other hand, the balance or 1,485 complaints were resolved in favour of the "governmental organization". In these cases the involvement of our Office culminated in a decision by the Ombudsman that he was unable to support the complainant pursuant to the provisions of Section 22(1) or (2) of The Ombudsman Act, 1975.

As noted in previous reports, our Office will continue to make every reasonable effort to assist those citizens who come to the Ombudsman with problems that do not fall within the Ombudsman's jurisdiction. Our Office once again was able to be of assistance in 99% of the non-jurisdictional complaints that warranted the opening of a file. The complainants were provided with either a specific referral to an appropriate agency or a clarifying explanation of their circumstances. Those who were involved with the 4,687 no follow-up complaints and information requests for which we did not open a file were provided with a referral or an explanation of their situation in the course of their interview with our staff. These no follow-up complaints and information requests were received and handled through our interview services by means of office interviews (469), telephone interviews (3,196), hearing interviews (523), and institutional visit interviews (499). The large number of complaints received in the course of interviews continues to support our view that citizens perceive this Office as one which they can approach on a very personal and individual basis, either by meeting with members of our staff in the course of a private hearing or by contacting the Office in person or by telephone.

During the period covered by this Eighth Report, April 1, 1980 to March 31, 1981, we opened 4,022 files and dealt with 4,687 no follow-up complaints and information requests, for which a file was not opened. Therefore, the Office received 8,709 new complaints and information requests. The volume of new complaints and information requests was somewhat lower than during the period covered by the Seventh Report. In large measure, this decline is attributable to a reduction in our schedule of hearings in the larger communities across the province, as well as a greater awareness by the public of our jurisdiction.

Once again, Northern Ontario had the highest complaint-to-population ratio, as well as the single largest volume of complaints from our nine regions. The Ontario-North Region accounted for 17% (750) of all complaints where a geographical determination could be made.

AVERAGE DURATION TO CLOSE FILES

The 5,083 files closed during the period covered by the Eighth Report, April 1, 1980 to March 31, 1981, as compared with the 4,655 closed the previous year, required an average of 207 days to close. The average duration to close a file during the period covered by the Seventh Report, April 1, 1979 to March 31, 1980, was 153 days. We attribute a significant proportion of the increase to the continued use and expansion of our no follow-up complaint documentation procedure (the procedure now includes correctional and psychiatric complaints). With this procedure, it is not necessary to open a file for straightforward non-jurisdictional complaints and information requests. We estimate that the overall average duration to close a file would have been considerably lower, approximately 173 days, had the 1,491 (excludes 3,196 no follow-up telephone interviews) no follow-up complaints and information requests been included in the calculation of the average duration to closing. Also, the increase in the overall average duration was in part attributable to a 14% increase from 255 days to 295 days in the average duration to close jurisdictional complaints. This increase in the average duration coincides with a 12% increase in the closing of more complicated and older jurisdictional complaints which required more than 6 months to complete. Furthermore, this increase in the closing of older jurisdictional complaints should be viewed as a consequence flowing from the fact that during the period covered by the Eighth Report, we significantly reduced our case load of jurisdictional files from 2,056 to 1,411.

STATISTICAL HIGHLIGHTS

The following table highlights some of the statistics contained in this Report:

| | | |
|-------------|---------|--|
| FILES: | | NO FOLLOW-UP COMPLAINTS AND INFORMATION REQUESTS: 4,687* |
| OPENED | 4,022* | |
| CLOSED | 5,083** | |
| COMPLAINTS: | 6,182** | |

| <u>BY JURISDICTION</u> | | <u>BY ORGANIZATION</u> | |
|------------------------|---------------------------|------------------------|--|
| 3,602 | within jurisdiction | 4,972 | involved Ontario Government ministries or agencies |
| 460 | information requests | 560 | involved private agencies, firms or individuals |
| 40 | jurisdiction undetermined | 276 | involved municipalities or local police forces |
| 2,080 | outside jurisdiction | 215 | involved Federal Government departments or agencies |
| | | 175 | involved courts |
| | | 38 | involved international, other provinces or unspecified |
| 6,182** | Complaints | 6,236*** | Complaints |

*Overall the Office received 8,709 new complaints and information requests.

** Some closed files involved more than one complaint

*** Some complaints involved more than one organization

REGIONAL OFFICES

Both Regional Offices located in North Bay and Thunder Bay are operating satisfactorily and are rendering excellent service to the Northern and Northwest portion of the Province.

PRIVATE HEARINGS

In keeping with the Office's commitment to continue Private Hearings throughout the Province, I am pleased to report that during the period covered by this Eighth Report, the Office of the Ombudsman held Private Hearings in the following 65 communities:

| Date | | Location | No. of Complaints Received | No. of Interviews Conducted |
|-------------|----|----------------|----------------------------------|-----------------------------------|
| <u>1980</u> | | | | |
| April | 1 | Parry Sound | 25 | 25 |
| | 9 | Barry's Bay | 31 | 29 |
| | 10 | Huntsville | 51 | 49 |
| | 23 | Morson | 01 | 01 |
| | 23 | Nester Falls | 01 | 01 |
| | 24 | Emo | 12 | 08 |
| | 25 | Vermillion Bay | 11 | 08 |
| May | 6 | Goderich | 12 | 12 |
| | 7 | Listowel | 19 | 18 |
| | 8 | Cambridge | 44 | 44 |
| June | 2 | Sudbury | 50 | 50 |
| | 3 | Espanola | 27 | 26 |
| | 3 | Kenora | 17 | 20 |
| | 10 | Barrie | 55 | 02 |
| | 11 | Orillia | 60 | 58 |
| | 12 | Gravenhurst | 24 | 24 |
| | 23 | Beardmore | 02 | 02 |
| | 24 | Geraldton | 13 | 12 |
| | 25 | Longlac | 06 | 05 |
| July | 10 | Strathroy | 30 | 29 |
| | 31 | Port Elgin | 18 | 18 |
| Aug. | 21 | Tillsonburg | 27 | 26 |

| Date | Location | No. of Complaints Received | No. of Interviews Conducted |
|-------------|----------------------|----------------------------------|-----------------------------------|
| Sept. | 9 Eganville | 15 | 15 |
| | 9 Nakina | 02 | 02 |
| | 10 Renfrew | 12 | 12 |
| | 11 Arnprior | 12 | 12 |
| | 15/16 Fort Frances | 14 | 14 |
| | 16 Morson | 03 | 03 |
| | 16 Sault Ste Marie | 15 | 15 |
| | 18 Dryden | 08 | 08 |
| Oct. | 7 Stirling | 07 | 07 |
| | 8 Picton | 07 | 07 |
| | 9 Brighton | 10 | 10 |
| | 14/15 Kirkland Lake | 13 | 13 |
| | 15 Manitouwadge | 01 | 01 |
| | 16 Cobalt | 08 | 08 |
| | 16 Schreiber | 02 | 02 |
| | 17 Nipigon | 01 | 01 |
| Nov. | 4 Hawkesbury | 13 | 13 |
| | 5 Chesterville | 00 | 00 |
| | 6 Kemptville | 08 | 08 |
| | 18 Red Lake | 19 | 13 |
| | 19 Ear Falls | 00 | 00 |
| | 25 Smooth Rock Falls | 04 | 04 |
| | 26 Cochrane | 04 | 04 |
| | 27 Iroquois Falls | 16 | 16 |
| <u>1981</u> | | | |
| Jan. | 6 Fergus | 05 | 05 |
| | 7 Mount Forest | 12 | 10 |
| | 8 Alliston | 13 | 11 |
| Feb. | 2 Webequie | 04 | 02 |
| | 3 Keswick | 06 | 06 |
| | 4 Fort Hope | 02 | 02 |
| | 4 Landsowne House | 02 | 01 |
| | 4 Lindsay | 33 | 32 |
| | 5 Lakefield | 07 | 07 |
| | 10 Thessalon | 05 | 04 |
| | 11 Elliot Lake | 05 | 05 |
| | 12 Little Current | 05 | 05 |
| Mar. | 3 Markdale | 11 | 10 |
| | 4 Collingwood | 21 | 19 |
| | 5 Wiarton | 12 | 12 |
| | 16 Round Lake | 04 | 01 |
| | 17 Deer Lake | 03 | 01 |
| | 18 Sandy Lake | 11 | 03 |
| | 19 North Spirit Lake | 05 | 01 |
| | | <u>896</u> | <u>835</u> |

North Spirit Lake, the last municipality visited during this reporting period, represents the 220th time members of our staff conducted private hearings.

Early in 1980-81 our hearing schedule was altered to allow our staff to devote their efforts to clearing up our case load. In past years approximately 15-20% of all complaints to our Office came as a direct result of the hearings. It was therefore decided that our concentration would be on smaller communities. This accounts in part for the fewer complaints received during this reporting period.

In addition, we revised our advertising message indicating that the Office of the Ombudsman would be prepared to take appointments on the hearing days that were scheduled in each municipality. Advertisements were placed in the local papers informing the general public they could contact our Office by phoning collect to Toronto to arrange an appointment for the day we were in their municipality.

During this reporting period our staff has visited more municipalities than ever before and we have accomplished it without increasing our budget for hearings. Providing the opportunity for complainants to meet with our staff through appointments resulted in us having to send less staff to each municipality.

In the fall of 1981 it is expected we will be returning to a hearing schedule that will again encompass visits to the larger municipalities.

As was reported in our Seventh Annual Report, hearings throughout Northern Ontario are conducted by staff members from our two regional offices and supplemented by staff from the Toronto Office when necessary.

VISITS TO INDIAN RESERVES AND SETTLEMENTS

Members of the staff from the Regional Services Directorate were able to visit the Indian Reserves and Settlements in Ontario, in order to offer the services of the Ombudsman to our native population.

During the past 12 months, the bands visited were located in Northern Ontario. In some cases, visits represented the first contact with the band on its own reserve, but a good many were repeat calls. Due to the isolation of many settlements from the closest non-Indian community, it is necessary for our staff representatives to fly into these locations. Without such personal contact, the majority of our Indian residents would never know of the role of the Ombudsman and be able to express their problems.

INDIAN RESERVES

| <u>Date</u> | <u>Location</u> |
|---------------------------|---|
| <u>1980</u> | |
| April 23 23 | Big Island Indian Band Sabaskong Indian Band |
| Aug. 11 12 13 14 | Moosonee Fort Albany Kashechewan Attawapiskat |
| Sept. 17 | Big Island Indian Reserve Rainy River |
| <u>1981</u> | |
| Feb. 2 4 4 | Webequie Settlement Fort Hope Indian Reserve Landsowne House Settlement |
| March 16 17 | North Caribou Lake Band Deer Lake Band |

THE CORRECTIONAL REPORT

Our Report on Adult Correctional Institutions which was begun in 1975 and published by The Ministry of Correctional Services in 1977 contained a total of 138 recommendations with many of those recommendations containing sub-parts.

Of the total number of recommendations, 105 dealt with specific institutions and 33 covered the broader aspects of the Report.

Having reviewed the entire Report as well as the replies of the former Ministers, the Honourable Frank Drea, and the Honourable Gordon Walker, I am happy to report that all of the 105 specific recommendations have been either implemented or no longer apply because of actions taken by the Ministry.

Prior to a recent meeting with the Ministry of Correctional Services, only 4 general recommendations remained unresolved. These were recommendations #4 - page 396, #5 - page 397, #28 - page 430, and #29 - page 436.

Recommendations #4 and #5 concern the issue of "overcrowding" in the Ministry's facilities. It was our recommendation that the Ministry immediately establish advisory committees composed of senior members of other ministries, agencies and bodies in the criminal justice areas, e.g., the Provincial Secretariat for Justice and the Ministry of the Solicitor-General.

On April 8, 1981, the Ministry of Correctional Services reported that an overcrowding problem still exists in some institutions. Nevertheless, the Ministry intends to take further steps in an attempt to alleviate "overcrowding".

A major step to alleviate this "overcrowding" has been the Ministry's increased budget in the area of crime prevention at the community level. The Ministry is presently implementing a "strategic plan" to develop, promote, and participate in crime prevention programmes and to provide victim-offender services. An example of these efforts has been the recent series of lectures entitled "Crime and Justice in the Community Week" held in Waterloo, Ontario from March 30 to April 5, 1981, and sponsored by the Ministry of Correctional Services and other agencies such as Youth in Conflict with the Law, and the John Howard Society.

Recommendation #28 addresses the need for increased availability of all documentation pertaining to sentenced prisoners. This documentation will be utilised at the time a sentenced prisoner enters into custody. This will assist the Ministry of Correctional Services in expediting the classification of inmates.

The Ministry has reported ongoing communications with chiefs of police which have resulted in improved cooperation in local communities. The chiefs of police have been provided with special forms by the Ministry which provide the needed additional information to assist in the proper classification of inmates. Also, the Ministry is seeking the cooperation of the police in gaining restricted direct access to the Canadian Police Information Centre (C.P.I.C.).

Recommendation #29 addresses amendments to The Ontario Election Act to allow incarcerated provincial inmates to vote in provincial elections.

The Ministry of Correctional Services reported that this recommendation had been referred to the Ministry of the Attorney General following Justice Cabinet Committee discussions. However, no further action has been taken. This recommendation will once again be brought to the attention of the new Minister of Correctional Services by the Deputy Minister.

I wish to conclude that I am satisfied with the efforts taken by the Ministry of Correctional Services on these recommendations.

NORTH PICKERING HEARINGS

Mr. Keith Hoilett, Chairman of the Hearings, is rapidly approaching the conclusion of his report on this lengthy and contentious problem. As soon as it is completed I will of course scrutinize it intently with a view to winding up this problem as soon as possible.

COURT CASES

In my Seventh Report I noted the appeal brought by five land acquisition agents from the decision of the High Court, which held that I had jurisdiction to further investigate the complaints of certain land owners in the North Pickering area. In an oral judgment released on December 3, 1980, the Court of Appeal unanimously dismissed the appeal.

There are no other applications or appeals involving our Office before the Courts, and I do not anticipate any in the immediate future.

LEASE

Since my last report, we have moved into our new premises at 125 Queen's Park at the corner of Bloor Street. The building has been beautifully renovated by the owners, Victoria College and we now have a guaranteed period of ten years of adequate quarters in which to perform our duties. A drastic increase in rental rates in the downtown area has demonstrated the wisdom of our move to this building. The lease negotiated was satisfactory to both parties and will result in substantial savings to the taxpayers of the province.

CONFERENCES ATTENDED

During the past year, I attended the International Bar Association Conference (Ombudsman Committee), the American Ombudsmen Conference and the Second International Ombudsman Conference. I specifically gave a submission from our Select Committee to the International Bar Association Conference and subsequently reported on the reception of that submission to the Select Committee.

I was appointed by the International Bar Association (Ombudsman Committee) liaison representative to the judiciary. I was also elected to the Consultative Committee for the Third International Ombudsman Conference.

All of the conferences attended were very interesting and educational. I was surprised to find how similar the problems are in various jurisdictions. However, after attending these conferences, I feel confident in saying that Ontario has one of the best, if not the best Ombudsman Offices in the world. I think it is also safe to say that generally our administrative arm of government is very responsive to the needs of citizens of the community.

In addition, I also wish to point out with pride that many members of my staff have been honoured by appointments in their respective fields. To name only one, Mr. Brian Goodman, Counsel and Special Advisor to the Ombudsman, was appointed Vice-Chairman of the International Bar Association (Ombudsman Committee) and Chairman of the Publications Subcommittee.

SELECT COMMITTEE

During the past year, the Select Committee of the Legislature of the Ombudsman held a number of meetings with me and the members of my staff. Since my appointment as Ombudsman, I have found the Select Committee to be very helpful and supportive to this Office. Their report on the Ombudsman Office was adopted by the Ontario Legislature. Their support of our Office has helped us to achieve a high level of efficiency.

VISITS BY OTHER OMBUDSMEN

During the past year, our Office has been visited by Ombudsmen from Mauritius, Nigeria, Australia, New Zealand, the United States and from most Provinces of Canada. In addition to the above we have been visited by representatives of other countries. Many of these visitors are contemplating setting up an Ombudsman Office in their own countries and others were interested in our methods of dealing with problems which arise in various segments of the administration of government.

AMENDMENTS TO THE OMBUDSMAN ACT

Recently, I have submitted to the Attorney General draft amendments to The Ombudsman Act, 1975, and a policy submission in support thereof.

DETAILED SUMMARIES

You will notice that the vast majority of detailed summaries involved cases in which we were able to be of some assistance to the complainants. The casual reader might presume that we find the complaints to our Office to be justified in a vast majority of cases. This, of course, is not true. Our statistics show that only about 30% of complaints are found to be resolved in favour of the complainant.

THE WORKMEN'S COMPENSATION BOARD

When I took over as Ombudsman and to this date, complaints about The Workmen's Compensation Board have been the second highest of any board, agency or ministry. Since my appointment I have carried on intensive negotiations with representatives of The Workmen's Compensation Board including Michael Starr, the former Chairman and Lincoln Alexander, the present Chairman. I am very pleased to say that the relationship between the Office of the Ombudsman and The Workmen's Compensation Board is now one of mutual appreciation and respect. We do not always agree, of course, but we are able to effectively discuss the areas in which we disagree.

I am pleased to say that there are only two cases included in this Report (see pages 65 to 70) in which we have made recommendations that have not been adopted. There were a number of others, but intensive discussions led to these matters being resolved.

RECOMMENDATIONS DENIED AND

SECTION 22(3) (d) or (e) RECOMMENDATIONS

As a means of taking inventory of all cases since the inception of the Office of the Ombudsman where either: 1) a recommendation under s.22(3) of The Ombudsman Act, 1975 was denied by the governmental organization to which it was addressed, or 2) a recommendation was made pursuant to s.22(3)(d) or (e) that a practice be altered or a law reconsidered, I have appended in each Report since my Sixth Report, two charts. These charts which in this Report appear as Appendices A and B at pages 85 to 100, summarize the recommendations made under the appropriate categories, and the disposition of these recommendations by the governmental organization, and where appropriate, by the Select Committee on the Ombudsman. The charts summarize only cases outstanding as of March 31, 1981, that is, cases where it is anticipated that some further action will be taken either by the governmental organization or by the Select Committee.

CHAPTER TWO

DETAILED CASE SUMMARIES

MINISTRY OF
AGRICULTURE & FOOD

DETAILED SUMMARY NO. 1

This was a complaint against the Ministry of Agriculture and Food's Ontario Junior Farmer Establishment Loan Corporation for not forgiving the complainant's junior farmer loan, which she was unable to pay when her husband died. The complainant was under the impression that her husband's life had been insured to cover the loan when in fact her life had been insured. The complainant was now struggling to operate the farm as well as holding down a full-time factory job.

After receiving the Deputy Minister's statement in reply to our notification of intent to investigate this complaint, the file was assigned for investigation.

Our investigators interviewed officials from the Ministry, the Corporation, and the insurance company, reviewing both the Ministry's and the insurance company's files. The investigation revealed that the Corporation had disposed of certain documents contained in this and other files in an effort to maximize storage space.

The investigation of this complaint showed that when the complainant and her husband applied for a loan in 1969, her husband was over the required age limit. Thus the loan was made out in the complainant's name. Since this loan was for an amount exceeding \$20,000, life insurance covering it was mandatory. Corporation officials contacted the complainant by telephone, and later by letter, informing her that her loan application had been accepted and asking her if she wanted the life insurance to be in her name or her husband's name. Generally, the husband's life was insured and the complainant and her husband were informed that this could be done even though the loan was made out in the complainant's name. The complainant and her husband agreed that it would be best to insure her husband's life and so by letter, they informed the Corporation of their wishes and forwarded the necessary documentation.

The documentation was later returned without comment by the Corporation. In a form letter, the insurance company informed the complainant's husband that his life had been insured. However, the company enclosed a certificate which indicated that the borrower, that is, the complainant, was the insured. Subsequent invoices for insurance premiums and mortgage payments were sent to her husband.

The Ministry was of the view that there was no indication on the loan application form that the insurance should be placed in the name of any person other than the applicant. The Ministry further stated that although the insurance company did address its letter to the complainant's husband, this was a typographical error and, in any case, the enclosed insurance certificate showed that the complainant, not her husband, was the insured person.

During the course of this investigation the Ombudsman came to the tentative conclusion pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Corporation had made an "unreasonable" omission in failing to keep complete records. He also came to the tentative conclusion that the

Corporation had made an "unreasonable" omission, in failing to take the appropriate steps pursuant to the receipt of the complainant's husband's birth certificate, and following this, in failing to instruct the insurance company properly and in accordance with the complainant's wishes.

Since it seemed to the Ombudsman that the Corporation could be "adversely affected" by his possible conclusions and recommendations, he accorded to the Ministry, pursuant to section 19(3) of The Ombudsman Act, 1975, the opportunity to make representations respecting his possible adverse report. Ministry officials made representations in a meeting with the Ombudsman and members of his staff, later confirmed by letter, to the effect that the complainant and her husband had the responsibility to see that their instructions concerning the life insurance policy were carried out properly; the complainant and her husband were in possession of the certificate of insurance which named the complainant, not the complainant's husband, as the insured, and they were therefore the only persons involved who had an opportunity to correct the error. The Corporation therefore felt that its refusal to forgive the loan was not unreasonable.

The Ombudsman carefully considered the Ministry's representations in light of the investigation conducted.

It was the Ombudsman's conclusion, that the Corporation had made an "unreasonable" omission in disposing of its documents. He suggested that care should be taken in the future not to destroy records relating to ongoing matters since they could be significant at a later date.

It was also the Ombudsman's conclusion, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Corporation had acted "unreasonably" in not forgiving at least part of the complainant's loan. Case law would seem to suggest that, in cases analogous to the complainant's, if an agent (in this case the Corporation) has been negligent in its duty to arrange the insurance desired by an insured (in this case the complainant and her husband), then that agent will be held liable by the courts even though the insured may not have read the policy to ensure that the coverage was arranged as requested. However, the Ombudsman was of the view that there was some responsibility on the part of the complainant and her husband to have detected the error and informed the Corporation of it. Since he thought that both the Corporation and the complainant shared responsibility for the error, he determined, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that it was "unreasonable" for the Corporation to have omitted to take the appropriate steps, pursuant to the complainant's and her husband's instructions. The Ombudsman therefore recommended, in accordance with Sections 22(3)(b) and (g) of The Ombudsman Act, 1975, that the Corporation forgive one-half of the complainant's loan.

The Deputy Minister informed this Office by letter that although his Ministry assumed no liability in this matter, the Ministry had nevertheless agreed to give effect to the Ombudsman's recommendation. The complainant was so notified and our file on this matter was closed.

MINISTRY OF
THE ATTORNEY GENERAL

DETAILED SUMMARY NO. 2

This complaint against the Office of the Public Trustee of Ontario was first brought to the attention of the Ombudsman in a letter to our Office.

The complainants, who were husband and wife, contracted with a contractor for the erection of a pre-fabricated house. Acting on the advice of their bank manager, they had paid the entire purchase price of \$17,995 in advance. The contractor died on September 30, 1976, leaving the complainants' house only partially completed and his subcontractors only partially paid. Two claims for lien were subsequently registered against the complainants' title to the land under The Mechanics' Lien Act and had to be paid out of their own pockets. They therefore attempted to recover the cost of completing the house and paying the subcontractors from the contractor's estate.

The contractor had died intestate leaving no known next of kin in Ontario. The Public Trustee had voluntarily taken over administration of what remained of his estate under section 2 of The Crown Administration of Estates Act. The complainants' lawyer contacted the Public Trustee's Office by telephone and letter in January of 1977. The lawyer expressed his opinion that the funds in the Public Trustee's possession were impressed with a statutory trust in favour of his clients under section 2(1) of The Mechanics' Lien Act, and accordingly the complainants were entitled to payment of their claim in priority to all other claimants. The lawyer was unable to persuade the Public Trustee's Office to his point of view, and consequently complained to the Ombudsman's Office on behalf of his clients that the Public Trustee's actions were unreasonable. In addition, the lawyer alleged that there was undue delay both in answering his letters and distributing the estate, as well as incompetence in calling in the assets of the estate.

A letter was sent by the Ombudsman to the Public Trustee of Ontario, advising him he was investigating the complaint.

Dealing first with the applicability and effect of section 2(1) of The Mechanics' Lien Act, the Public Trustee indicated that although he had readily accepted the complainants as ordinary creditors of the contractor's estate, he was of the opinion that they were only entitled to share in the assets of the estate pari passu with the deceased's other creditors. As the contractor's liabilities at the time of his death far exceeded his assets, this would have resulted in a very small distribution to each creditor. The lawyer, on the other hand, contended that by virtue of section 2(1), his clients were entitled to the whole of the estate to the exclusion of all other creditors.

Section 2(1) of The Mechanics' Lien Act states as follows:

All sums received by a . . . contractor . . . on account of the contract price constitute a trust fund in his hands for the benefit of the owner, . . . subcontractor, . . . workmen, and persons who have supplied materials on . . . the contract, . . . and the . . . contractor . . . is trustee of all such sums so received by him and he shall not appropriate or

convert any part thereof to his own use or to any use not authorized by the trust until all workmen, . . . all persons who have supplied materials on the contract . . . and all subcontractors are paid for work done or materials supplied . . .

The Public Trustee stated that section 2(1) was inapplicable because a trust had not been, and could never be, established on the facts of this case. He stated that the first prerequisite to any claim against specific funds (as opposed to an action in damages for breach of trust) was to trace the funds back to the claimant. This was quite impossible as the assets of the contractor's estate were derived exclusively from the sale proceeds of an automobile owned by the deceased at his death, the balance of a bank account not used by the deceased for business purposes, and certain Canada Pension Plan benefits.

Further, the Public Trustee argued that The Mechanics' Lien Act was designed to give security to persons doing work or furnishing materials in making an improvement on land. To the extent that the owner was intended to be protected at all, that protection was limited to the amount of money owing to subcontractors and workmen. In other words, the trust continued only so long as, and to the extent that workmen and materialmen remained unpaid.

After reviewing the Public Trustee's and the complainants' respective legal arguments, the Ombudsman was unable to fault the Public Trustee's refusal to pay over to the complainants the whole of the funds held by him to the credit of the contractor's estate on the basis of section 2(1) of The Mechanics' Lien Act. It is the Ombudsman's understanding that the Public Trustee, like any other trustee, is obliged to exercise the same degree of care which an ordinarily prudent person would take in the conduct of his own affairs if he wished to provide against loss to people for whom he felt morally bound to provide. As there seemed to be little authority in favour of the complainants' position, and there is jurisprudence against it, it was the Ombudsman's opinion that the Public Trustee's legal position was not unreasonable.

With respect to the allegation of administrative delay, the complainants stated that there were three ways in which they felt the Public Trustee had been remiss: (1) delay in applying for letters of administration, (2) delay in distributing the estate, and (3) delay in answering their correspondence.

Under section 2 of The Crown Administration of Estates Act, the Public Trustee has a discretion to apply for letters of administration where an intestate dies in Ontario leaving no known next of kin in the province. He is under no obligation to do so, and there is no time limit unless administration is contested. In this case, the estate was brought to the Public Trustee's attention in October of 1976, a preliminary investigation was underway by November, letters of administration were applied for on June 28, 1977, and granted on July 20, 1977. In the intervening time, the Public Trustee's investigators visited the former residence of the deceased. They obtained new keys for and towed the deceased's automobile to a car lot in preparation for sale, and canvassed for creditors of the estate. In view of

all this activity, the Ombudsman was unable to conclude that the due administration of this estate was in any way affected by any delay on the part of the Public Trustee in applying for letters of administration. Nor did the investigation reveal any evidence that the Public Trustee exercised the discretion given under section 2 of The Crown Administration of Estates Act improperly or unreasonably.

As to the delay in distributing this estate, the Public Trustee's Office pointed out that the first tasks of any administrator/trustee prior to distribution are to realize upon the assets of the deceased, ascertain his liabilities, and pay all such liabilities to the extent that assets are available, on a pari passu basis. In this case, the Public Trustee explained that his task was made more difficult by the questionable business practices of the deceased during his lifetime. In addition to having the use of two social insurance numbers and omitting to file income tax returns during his lifetime, the contractor apparently ran up a number of unpaid trade bills under several names and fulfilled few, if any, of his business obligations. Issuance of an income tax clearance by the federal revenue authorities was delayed as the result of the former, and three separate mechanics' lien actions were instituted as the result of the latter. Although two of the liens had been settled, it was the Ombudsman's understanding that a distribution to creditors could not be made until the final law suit was disposed of by the Courts. In view of the above, including the difficulty in obtaining information about the deceased which the mysterious circumstances surrounding his death occasioned, the Ombudsman found it impossible to conclude that the Public Trustee unreasonably delayed in distributing this estate.

The complainants also complained that the Public Trustee had been inordinately slow in responding to their letters. The Public Trustee's file indicated that the complainants' lawyer's letter of January 28, 1977 was not answered in writing until April 28, 1977, but thereafter his letters were answered within approximately two weeks of their receipt until January 1978. At that point a decision was made not to respond to the lawyer's letters in writing because the Public Trustee did not think it fair to diminish the assets of this estate by running up a legal bill for answering the correspondence of claimants who choose to write monthly knowing that no progress was likely to have been made. Bearing in mind the volume of correspondence directed to the Public Trustee's Office, the Ombudsman did not think the Public Trustee's decision could be said to be unreasonable in this case. The Ombudsman also understood that answers to some of the lawyer's questions were provided by telephone in the periods between letters.

It was the complainants' final contention that the Public Trustee improperly failed to realize upon one of the assets of the estate, thereby occasioning loss to his clients. The asset in question was a 1974 Ford van found by the police in the woods with licence plates missing and the engine registration number filed off. The van was eventually sold by public auction in satisfaction of a warehouseman's lien.

The complainants presumed that the van had belonged to the contractor. In fact, the police never succeeded in tracing its ownership. The only connection they had, which was tenuous at best, arose from the fact

that a delivery van belonging to one of the contractor's limited companies had been reported missing. The connection was therefore to the company, which was not under the Public Trustee's administration and against which the complainants had no claim. Moreover, the Public Trustee was not even made aware of the existence of the vehicle until July 6, 1977, by which time towing and storage charges totalling over \$1,000 had already accumulated against it. He then instructed one of his investigators to inspect and photograph the vehicle and, having estimated its value to be less than the charges outstanding, decided in light of all the above not to consider it part of the estate.

As the Ombudsman understood it, the test is once again whether the reasonable person would, in all of the circumstances, have been satisfied that the asset in question belonged to the deceased and ought to be collected into the estate.

The Ombudsman reported to the complainants that he was unable to support any of their complaints.

MINISTRY OF
COLLEGES AND UNIVERSITIES

DETAILED SUMMARY NO. 3

This complainant was enrolled as a student in a six semester program provided by a Community College and had successfully completed the first three semesters of the program with excellent grades. At the completion of the fourth semester, however, the complainant received low or failing grades, primarily due to an illness during a portion of that semester. As a result of the poor grades she received, the complainant was refused admission to an internship semester which was required for completion of the diploma program.

She therefore lodged an appeal of her fourth semester grades with the College Academic Committee and a hearing was held. The Committee decided to make only minor changes in her grades and she was still unable to register for the fifth (internship) semester.

The complainant contacted the Office of the Ombudsman as she felt that she was not given a fair hearing for the following reasons:

1. She was not permitted to have counsel present;
2. The witnesses were allowed to be present only when they were testifying;
3. Except for the Chairman, the decision was rendered by the very teachers who had given her the grades;
4. A document unfavourably relating to her psychological state was circulated at the hearing. This was later recalled and the members were instructed not to consider it, but the complainant felt that the damage had already been done;
5. The appeal procedures had not been followed as set out in the student handbook.

The complainant further commented that she would like a transcript of the hearing as there had been a stenographer present taking notes. However, she had been informed by officials at the College that no notes were taken.

In accordance with the requirements of The Ombudsman Act, 1975, the Ombudsman advised the College of his intention to investigate this complaint and the College was given the opportunity to state its position. Upon receiving the College's statement, our file on this complaint was then assigned to a member of the Ombudsman's investigative staff for investigation.

In addition to receiving further relevant information and documentation from the complainant, our investigation into this complaint included interviews with the complainant's lawyer, the various members of the Academic Appeal Committee, her various instructors, the Dean of the division in which the complainant was enrolled, and the complainant's boyfriend.

The complainant advised the investigator that during the four-month fourth semester she was absent for approximately three weeks at various times due to illness. She further advised the investigator that the yellow handbook provided by the College did not indicate that attending a certain number of classes was required in order to receive a passing grade.

The investigation found that the yellow handbook provided by the College does in fact indicate that classroom participation is a criterion for evaluation. The Chairman of the Appeal Committee advised that within the College, it is left to the discretion of the individual instructors as to whether or not grades will be assigned for attendance. The Ombudsman concluded that it ought to have been apparent, both from the handbook and from the nature of the program, that regular attendance was necessary for successful standing.

With respect to the complainant's contention that she was not permitted to have counsel present at the hearing, our investigation revealed that her lawyer had telephoned the College prior to the appeal hearing requesting permission to represent her. The College refused permission. The complainant felt that she required his assistance as she was not familiar with the procedures of an appeal hearing.

The Chairman of the Appeal Committee advised the Office of the Ombudsman that because an appeal of academic grades is not a legal matter he was of the view that the attendance of a lawyer was unnecessary. However, he stated that he had no objection to a student being represented by another student or faculty member. Moreover, he was of the view that if a student was represented by a lawyer, then the College would also have to be represented by a lawyer, as would the instructors who were called before the hearing.

With respect to her complaint that witnesses at the hearing were allowed to be present only while they were testifying, the Chairman advised the Office of the Ombudsman that this was so. However, he pointed out that she had a full opportunity to question the witnesses. He stated that he did not recall her objecting to the manner in which the witnesses were called. This was confirmed by various members of the Academic Appeal Committee.

The Ombudsman noted that it is customary at trials to exclude witnesses from the courtroom except while they are testifying. This is done to ensure that they are not influenced by each other's testimony, and it works to the equal advantage of the various parties involved. Therefore, the Ombudsman did not feel that it was unfair or unreasonable to have excluded the witnesses from the hearing except while they were testifying.

With respect to the contention that the decision on her appeal was rendered by the very teachers who had given her the grades, the investigation showed quite the contrary. The members of the Academic Appeal Committee had not had prior dealings with the complainant. It is the College's policy that anyone discussing the matter with the student in the course of earlier appeal stages is disqualified from sitting on the Academic Appeal Committee. Accordingly, the Ombudsman did not support the complainant on this contention.

Regarding her contention that a document unfavourably relating to her psychological state was circulated at the hearing, the complainant stated that the document, which was originated by the Dean of the division in which she was enrolled, was circulated to the Committee members.

The Chairman advised the Office of the Ombudsman that personal opinions have no bearing on grades and the Dean's report was deemed to be irrelevant. The Chairman stated that after he had read a portion of it, the complainant objected, and that is when he ruled it irrelevant. The investigator learned from members of the Committee that the report had been circulated but that it was collected and returned to the Dean after it had been ruled irrelevant. The Committee members said that they themselves considered the report irrelevant even before the Chairman formally deemed it so. All of the members advised the investigator that they did not take it into consideration when making their decision on the complainant's grades.

Although it would have been preferable for the document to have been ruled irrelevant before it was distributed, the Ombudsman could not find that its distribution caused any unfairness to the complainant.

In elaboration of her fifth contention that the appeal procedures had not been followed as set out in the Student Handbook, the complainant stated that she was not charged a fee for the appeal nor did she have discussions with faculty members before submitting her appeal to the Committee.

The Chairman advised the Office of the Ombudsman that the College did not know what the complainant was charged by way of fees, although he was certain that she was not overcharged. He indicated that the cost of a search of the College's records would be out of all proportion to the amount of money involved. He stated that if the complainant had underpaid she may wish to correct the error and if she claimed she had been overcharged the College would search its records and make an appropriate refund.

As stated in the Student Handbook, the Chairman advised that discussions did take place between the complainant and her instructors. The Chairman stated that such discussions were not documented as it is in their nature that they be relatively informal. However, the Ombudsman understands that now when a faculty member discusses academic problems with a student, the student is required to sign a statement acknowledging the discussion.

During the course of our investigation the complainant contended that she had not had the opportunity to question one of her instructors as he had left the hearing early for a dental appointment. The investigator confirmed that her instructor did in fact have a dental appointment on the day of the hearing. However, the investigator was advised by the Committee members that the instructor was not rushed and that the complainant did not object to his leaving without her having questioned him. Therefore, the Ombudsman was not able to conclude that the fact that the instructor had left early caused any unfairness to the complainant.

In respect of the complainant's request for a transcript of the hearing, the Chairman informed the investigator that there was no stenographer present at the hearing. Rather, due to the absence of the Assistant to the Academic Committee, the Chairman's secretary attended in order to manage the documentary evidence and note the Committee's recommendations. The Ombudsman understands that the Chairman's secretary does not take shorthand and she made no attempt to record the proceedings. However, after the hearing, minutes were formulated and circulated for the Committee members' approval. While these minutes were intended solely for internal College purposes, a copy was provided to the Office of the Ombudsman and permission was obtained to release a copy to the complainant, which was done.

With respect to the complainant's inability to register for the fifth semester, the Chairman indicated that she could not register in those courses for which she had failed the prerequisites. The Chairman advised that the complainant can, of course, repeat the prerequisite courses.

As a result of the investigation, the Ombudsman formed the opinion that it might be open to him to conclude, in accordance with section 22(1)(b) of The Ombudsman Act, 1975, that the College had acted "unreasonably" in not permitting the complainant legal representation at the academic appeal hearing. In forming this tentative opinion the Ombudsman considered the case law on the application of the rules of natural justice to a non-statutory domestic body, such as the College's Academic Committee. The Ombudsman noted that the appeal had serious consequences for the complainant. The Ombudsman did not feel that it would be necessary for witnesses appearing at the appeal (i.e. instructors, other students) to be represented by legal counsel just because the appellant was, since they would not be facing any consequences.

It appeared that it might be open to the Ombudsman to recommend in accordance with section 22(3)(d) of The Ombudsman Act, 1975, that the College amend its practice in order to permit a student to be represented by counsel at an academic appeal hearing if he/she so wished.

Pursuant to the requirements of section 19(3) of The Ombudsman Act, 1975, the Ombudsman wrote to the College advising it of his possible conclusion and recommendation. Because in his view, the College might be "adversely affected" by his possible conclusion and recommendation, the Ombudsman afforded it the opportunity to make representations respecting this matter.

After meeting and discussing this matter further with the President of the College and the Chairman of the Appeal Committee, the Ombudsman received the College's response which stated that:

If, on the facts of some future case, it appeared to the Academic Committee, or to any other College review body, that lawyers might be of assistance or that legal representation was, for some reason, desirable, they would, no doubt, consider permitting legal representation.

In view of all the circumstances the Ombudsman formed the opinion, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the College's decision to not allow the complainant legal representation at the academic appeal hearing was "unreasonable".

However, the Ombudsman concluded that to recommend a new hearing to review the complainant's grades would be fruitless as the result would in all likelihood be the same as in the previous hearing.

In addition, the need for any recommendation which might have been appropriate for the Ombudsman to make with respect to allowing legal representation in the future was obviated by the College's statement that such legal representation will be allowed, in the future, where warranted.

MINISTRY OF
COMMUNITY AND SOCIAL SERVICES

DETAILED SUMMARY NO. 4

From December 1, 1978 until April 30, 1979 the complainant received from the Ministry of Community and Social Services an allowance under The Family Benefits Act as a single, permanently unemployable person.

In May 1979, her allowance was terminated by the Ministry on the ground that she was no longer considered to be living under the circumstances of a single person. The complainant appealed this decision to the Social Assistance Review Board and following a hearing on July 4, 1979 the Board, in accordance with Section 12(10)(a) of The Family Benefits Act upheld the decision of the Director of Family Benefits to terminate her allowance.

The complainant registered her complaint with our Office by telephone regarding the Board's decision. She contended that notwithstanding the fact that she was living with her husband, the decision of the Board was unreasonable.

Accordingly, pursuant to Section 19(1) of The Ombudsman Act, 1975 the Chairman of the Social Assistance Review Board and the Deputy Minister of Community and Social Services were informed of the Ombudsman's intention to investigate this complaint.

The Chairman of the Social Assistance Review Board advised the Ombudsman that he and counsel for the Board had thoroughly reviewed the complainant's file and were satisfied that the Board had rendered the only decision possible based on the facts and evidence adduced at the hearing and in accordance with the existing legislation. On behalf of the Deputy Minister, the Director of Income Maintenance wrote to the Ombudsman and indicated that the current legislation does not provide for the granting of a "disability pension", to female persons who reside with their spouses.

During the course of this investigation the files maintained by the Social Assistance Review Board and the Ministry of Community and Social Services were examined in detail. In addition the complainant was interviewed with respect to her living circumstances at the time of the Ministry's decision. It was confirmed by the complainant that she was residing with her husband. She was of the view however that since she had been classified by the Ministry as a "permanently unemployable person", the fact that she was living with her husband should not prevent her from receiving family benefits if she was otherwise eligible.

After conducting careful review of the relevant provisions of The Family Benefits Act and Regulations pursuant thereto and with particular reference to the circumstances under which an individual may qualify for an allowance, it appeared that there existed sufficient grounds for the making of a report or recommendation which could adversely affect the Ministry of Community and Social Services. Therefore, pursuant to Section 19(3) of The Ombudsman Act, 1975, the Ministry of Community and Social Services was given the opportunity to make representations concerning the tentative conclusions and recommendation reached by the Ombudsman.

The Ombudsman tentatively concluded that the decision of the Social Assistance Review Board had been made in accordance with the current legislation and was therefore not unreasonable.

The Ombudsman noted that in the complainant's case, the application of the current legislation meant that although the complainant was considered to be a "permanently unemployable person" within the meaning of The Family Benefits Act, she was disentitled because she was not residing as a single person. However, if the roles had been reversed and the complainant's husband had been classified as a "permanently unemployable person", and all other eligibility criteria were met, he would have been eligible to receive family benefits.

The Ombudsman commented that in his view the treatment men and women receive in this circumstance is fundamentally inconsistent and he reached the tentative conclusion pursuant to Section 22(1)(b) of The Ombudsman Act, 1975 that the decisions reached by the Director of Income Maintenance and the Social Assistance Review Board were in accordance with a provision of The Family Benefits Act which was improperly discriminatory.

The Ombudsman tentatively recommended pursuant to Section 22(3)(g) of The Ombudsman Act, 1975 that The Family Benefits Act and the Regulations thereunder be amended to provide for equal treatment to both men and women who are residing with their spouses when family benefits entitlement is being determined.

In his letter of response, the Minister of Community and Social Services confirmed that a woman who is living with her husband is not eligible to receive family benefits regardless of other circumstances whereas a man may be entitled to an allowance on behalf of himself and his family if he otherwise fulfills the family benefits eligibility criteria. The Minister stated in part:

I can understand your tentative conclusions and recommendations and I would note to you that as funds become available, consideration will be given to rectifying some of the problems in the area of discrimination on the basis of sex. However, to be quite frank with you, I do not know of any current method where we can open new areas of eligibility and at the same time, continue to provide funds on a priority basis to persons who are in the greatest need.

The Ombudsman carefully considered the Minister's response with respect to this matter however, he was not satisfied that on the basis of information he had received from the Ministry to date, some financial accommodation could not be reasonably arranged to overcome the improperly discriminatory nature of the current legislation.

Accordingly, the Ombudsman formed the opinion pursuant to Section 22(1)(b) of The Ombudsman Act, 1975 that the decisions reached by the Director of Family Benefits and the Social Assistance Review Board with respect to the complainant's allowance under The Family Benefits Act were

in accordance with a provision of The Family Benefits Act and the Regulations thereunder which is improperly discriminatory. The Ombudsman recommended in his Report that pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, The Family Benefits Act and the Regulations thereunder be amended to provide for equal treatment to both men and women who are residing with their spouses when entitlement to an allowance under The Family Benefits Act is being determined.

The Report made under Section 22(3)(g) of The Ombudsman Act, 1975 was forwarded to the Minister of Community and Social Services. The Ombudsman subsequently received a response from the Minister indicating that he recognized "that there are certain distinctions made in our programs which may no longer be in keeping with current standards and values". He advised the Ombudsman that he is prepared to propose to Cabinet certain changes to The Family Benefits Act which would address the discrimination issue. He stated however that he could not promise a firm time frame for these reforms as it is necessary that these measures be discussed with the Cabinet and the cost implications be reviewed by Management Board.

The Ombudsman accepted the Minister's letter as an adequate and appropriate response to his recommendation. The complainant was advised of the results of the investigation. The file was closed. However, the Ombudsman advised the Minister that he would be making periodic contacts with his Office to obtain updates on what action was being taken by the Minister in this regard.

MINISTRY OF
CONSUMER AND COMMERCIAL RELATIONS

LIQUOR CONTROL BOARD OF ONTARIO

ONTARIO RENT REVIEW PROGRAM

DETAILED SUMMARY NO. 5

In October, 1977, the complainant received notification that his driver's licence had been suspended. Payment of nearly \$20,000.00 had been made from the Motor Vehicle Accident Claims Fund and he had failed to reimburse the Fund in a claim filed against him as an uninsured driver. The complainant had not been involved in the accident, and did not consider himself the owner of the car involved.

The car had been abandoned in the complainant's yard in the fall of 1972. His younger brothers repaired it the following spring. The owner of the car drowned in the winter of 1973.

Once the car was in running order, various people drove it. The keys were usually left in the ignition. The vehicle had been in operation for about a week when an acquaintance of the complainant borrowed it to drive himself home. The complainant consented, and went to bed. The friend did not go home however; he instead drove around all night, drinking with friends. Early the following morning he drove off the road, killing one person and injuring another.

The O.P.P. then charged the complainant with failing to register a motor vehicle under The Highway Traffic Act and with failing to produce evidence of payment of the uninsured motor vehicle fee under The Motor Vehicle Accident Claims Act. The complainant was told he had to accept the ticket. As the nearest Legal Aid office was 60 miles away, he paid the tickets because at the time it appeared to be the simplest means of dealing with the charges.

In July, 1974, the complainant received a notice that action had been commenced against him, pursuant to section 4 of The Motor Vehicle Accident Claims Act. He did not defend the action, and the Fund retained its own lawyers to act.

In April, 1976, the complainant attended his examination for discovery in Toronto. He denied being the owner of the motor vehicle in question. The complainant also recalled that the lawyer acting in his name for the Fund told him that no liability would be attached to the accident. The complainant heard nothing more until October, 1977, when he was notified that the action had been settled and he was indebted to the Fund. The complainant subsequently requested the assistance of the Ombudsman.

Our investigator reviewed the complainant's file at the Fund offices, and spoke with the Deputy Director of Motor Vehicle Accident Claims, who felt the Ministry had acted correctly. Our investigator also reviewed the file of the lawyer who acted for the Ministry on the case, and spoke with the lawyer himself.

The Ombudsman then wrote to the Superintendent of Insurance informing him, pursuant to section 19(3) of The Ombudsman Act, 1975, of possible conclusions and recommendations. These included an opinion that the notice of action had not adequately alerted the complainant to the consequences of failing to defend the action against him. The Ombudsman proposed a recommendation that the Fund notify the original defendants

before it consents to judgment. He also suggested that the Minister might forbear collecting from the complainant in this case, and reinstate the complainant's driver's licence.

The Superintendent of Insurance responded that, under the circumstances, he saw no justification for waiving the complainant's obligation to repay the Fund, nor to reinstate his driver's licence until he entered into a satisfactory repayment agreement.

The Ombudsman formally recommended that the phrasing of the notice sent to defendants be altered so that the possible consequences of a defendant's failing to defend an action are made clear to him or her. A defendant should further be notified of the Ministry's intent to settle the claim and the proposed terms of settlement. Finally, the Ombudsman asked the Superintendent of Insurance to reconsider the complainant's obligation to repay the Motor Vehicle Accident Claims Fund, and perhaps make some compromise of the amount of indebtedness, thus permitting the reinstatement of the complainant's driver's licence.

The Ministry responded that the notices in question had already been replaced and that the replacement notice was under further review. It informed our Office that usually solicitors acting for the Fund do not notify the defendant in an action that the Ministry is proposing to settle a claim; in the future every effort would be made to so advise uninsured defendants.

The Ombudsman met with the Deputy Minister of Consumer and Commercial Relations and the Superintendent of Insurance to discuss the complainant's indebtedness to the Fund. The Fund consequently made arrangements with the complainant which satisfied both parties. The suspension of the complainant's driver's licence was also lifted.

A final report was sent to all interested parties, and our file was then closed.

DETAILED SUMMARY NO. 6

The complainant's solicitor wrote to the Office of the Ombudsman, aggrieved by what he considered to be a lack of proper or adequate action on the part of the Ministry of Consumer and Commercial Relations over a complaint which he had lodged against an insurance company. The solicitor alleged that his client's privacy had been invaded and that confidential medical information had been obtained about her by private investigators acting on behalf of an insurance company. As well, he contended that someone involved in the investigation attempted to obtain hospital records relating to his client by claiming to be from the office of a medical doctor connected with his client. Although the matter was reported to the Superintendent of Insurance, it appeared to the solicitor that nothing of substance had been done.

Our investigation focused on two issues:

1. whether the investigation conducted by the Superintendent of Insurance into this complaint was adequate, and
2. whether the action taken by the Superintendent of Insurance on the basis of his investigation was reasonable.

After receiving the Ministry's statement on this matter our file was assigned for investigation. Our investigation revealed certain inadequacies in the investigation of this complaint conducted for the Superintendent of Insurance. For example, the Registrar who investigated the complaint was of the view that the insurance company had not obtained medical information about the complainant through its private investigators. However, an internal memorandum on the insurance company's file and the private investigator's report which was submitted to the insurance company seemed to suggest otherwise. Also, the Registrar said that he issued a verbal reprimand to the insurance company and received a verbal undertaking that the company would draft a code of conduct for its claim representatives that would include a ban on pretext interviews. However, our investigation determined that this criticism of the insurance company had not been recorded on the Ministry's file.

The Ombudsman came to the tentative conclusion that the Superintendent's investigation of this matter had been inadequate and that his issuing of only a verbal reprimand was "unreasonable" within the meaning of section 22(1)(b) of The Ombudsman Act, 1975. The Ombudsman thought that had a more thorough investigation been conducted, the Superintendent would have been better able to determine if the insurance company was engaging in an unfair or deceptive act or practice, contrary to section 389 of The Insurance Act. If such was the case, a hearing could have been held under the relevant section of the Act and an appropriate order issued. Therefore, the Ombudsman made the tentative recommendations that the Office of the Superintendent of Insurance conduct a more thorough investigation and that a record of the reprimand (or any further disciplinary action taken against the company) be made.

Since the Ombudsman was aware that his possible conclusions and recommendations could "adversely affect" the Ministry and the insurance company, he accorded them the opportunity to make representations pursuant to section 19(3) of The Ombudsman Act, 1975. Representations were received in a meeting at the Office of the Ombudsman from the insurance company, and by letter from the Ministry. It was the Ministry's position that not only had the Superintendent issued a reprimand, but also that the insurance company had taken specific steps to prevent such a situation from recurring. The Deputy Minister concurred with the Superintendent that since the case had been resolved and the insurance company had taken the required corrective measures no further action was needed. The Deputy Minister thought that the Superintendent's verbal reprimand was adequate because the insurance company had formally replied to the Ministry in writing, including evidence to show that it had moved constructively to fulfill the obligation of its undertaking to the Superintendent's Office.

The Ombudsman carefully considered these representations as well as those made by the insurance company in light of the investigation conducted.

Although the Ombudsman was of the opinion that the Superintendent could have conducted a more thorough investigation, he also felt that, under the above circumstances, another investigation was unwarranted. However, the Ombudsman did conclude, in accordance with section 22(1)(b) of The Ombudsman Act, 1975, that the Superintendent's issuance of only a verbal reprimand was "unreasonable". He therefore recommended, pursuant to section 22(3)(g) of the Act, that the Superintendent properly record this instance of criticism against the insurance company.

The Deputy Minister subsequently informed this Office that his Ministry had accepted the recommendation. Our complainant and her solicitor were so informed and our file on this matter was closed.

DETAILED SUMMARY NO. 7

The complainant wrote to our Office complaining that the Liquor Control Board of Ontario (L.C.B.O.) did not have the statutory authority to require him to pay a mark-up to the L.C.B.O. on wine that he imported for his own use. The mark-up was purportedly collected by federal customs agents on behalf of the L.C.B.O.

Our research indicated that section 3 of the Importation of Intoxicating Liquors Act authorizes the federal government to control the importation of any intoxicating liquor into any province. Section 3 also permits a board, authorized by provincial law to sell liquor, to also import it. By virtue of section 3 of The Liquor Control Act, the L.C.B.O. is a board within the meaning of section 3 of the Importation of Intoxicating Liquors Act, and therefore, has the authority to import liquor, control its sale and fix prices at which it is sold.

Since section 3 of the Importation of Intoxicating Liquors Act prohibits a person like the complainant from importing wine, there was no question that he had done so illegally, albeit with the knowing consent of the federal authorities. However, further research indicated that notwithstanding this illegality, the L.C.B.O. had no authority to require him to pay a mark-up, which is approximately 123% of the purchase price of the wine. Section 3 of the Importation of Intoxicating Liquors Act does not cause privately imported wine to become forfeit. The title in the liquor does not cease to rest with the importer upon the illicit importation at the port of entry. Although section 185 of the Customs Act authorizes federal authorities to seize and forfeit unlawfully imported goods, the action taken with respect to personally imported wine is a matter left within the purview of federal authorities. If no action is taken by federal authorities, then the property in the liquor continues to reside with the importer.

Since the federal customs officers did not seize or forfeit the wine in this case, the ownership of the wine rested with the importer, our complainant. Clearly, the wine in question never became the property of the L.C.B.O., and the L.C.B.O., therefore, had no statutory authority to charge a mark-up on the liquor. The only legislative authority given to the L.C.B.O. by its Act is to fix prices at which the various classes and varieties of liquor are to be sold. Where wine is not purchased on behalf of the

L.C.B.O. and not consigned to the L.C.B.O., such wine is accordingly not sold by the L.C.B.O. nor does it become the property of the L.C.B.O. Therefore, the L.C.B.O. has no authority to stipulate what price must be paid for the wine, and cannot require the complainant to pay a specified mark-up. In the absence of any statutory authority to take such action, the Crown may not require its citizens to pay such a charge by administrative order only.

The L.C.B.O. argued that the complainant was acting as its agent when importing his wine. However, our research indicated that this was not the case since there was no evidence that the complainant had, at any time, held himself out as acting on behalf of the L.C.B.O.

Accordingly, the Ombudsman concluded that the actions of the L.C.B.O., requiring the complainant to pay a mark-up on wine privately imported, was contrary to law. It was therefore recommended that the L.C.B.O. take steps to have its statute amended to give it the statutory authority to levy its mark-up. The L.C.B.O. subsequently advised our Office that it had suggested to the Minister of Consumer and Commercial Relations that our recommendation be accepted. The necessary amendments to the Act were expected to be presented to the Legislature shortly thereafter.

The Ombudsman did not recommend that the L.C.B.O. refund to the complainant all the monies he had paid which were levied as the L.C.B.O.'s mark-up on the private importations of wine. It was the Ombudsman's opinion that the complainant and all other private importers would be placed in a unique and advantageous position with respect to the rest of the public if such a recommendation were made.

A final report was sent to all interested parties, and our file was then closed.

DETAILED SUMMARY NO. 8

This was a complaint against the Ontario Rent Review Program of the Ministry of Consumer and Commercial Relations.

In early 1978, the complainant's landlady advised her that her rent would increase from \$165 to \$245 a month and that a rent review would take place. As she did not receive notification of a rent review, the complainant contacted the local Rent Review Office and learned that her landlady had not applied for a review. Staff at that office advised her to pay her former rent plus 6%.

She took the advice of the Rent Review Office and paid the rent plus 6%; however, the landlady notified her that due to the needs of her own family, she would have to give up the apartment and move elsewhere. The complainant realized that she would have to rely on her remedies under The Landlord and Tenant Act if she wished to remain in the premises. However, she contacted the Rent Review Office and advised the staff of the landlady's violation of The Residential Premises Rent Review Act. The

complainant contended that she was told by the Rent Review Officer that the Program could take no steps to require the landlady to comply with the Act. She contended that the Program should have taken steps to prosecute the landlady for violation of the Act, and that if it had done so, she would not have found herself in the position of defending an application for a writ of possession.

This Office wrote to the Executive Director of the Ontario Rent Review Program, in accordance with the requirements of The Ombudsman Act, 1975, and advised him of our intention to investigate this complaint. The Executive Director was also asked whether he was prepared to give a statement of his Board's position on the complaint.

The response indicated that when a tenant finds himself or herself in the position of being given a notice of rent increase above the statutory guidelines, with no application for rent review having been made, and then contacts the Rent Review Office, as normal program policy that person is informed of the following options:

- (a) Pay the present rent plus 6% increase on the date when the increase is to become effective.
- (b) File an application for justification of the proposed rent increase within sixty days of the date on the notice of the rent increase, which forces the landlord to reach an agreement with the tenant or file an application for rent review.

The Executive Director explained that, in this case, after being presented with these options, the complainant chose to pay the 6% increase and not file an application for justification of the increase. Thus, the Rent Review Office did not receive an application from either the tenant or landlord, and had no authority under the Act to take any action in the case. He added that if the complainant believed that an offence under the Act had occurred and the facts of the case justified this belief, then the complainant could have initiated a prosecution by swearing out an information before a local Justice of the Peace. Once this step had been taken, the Crown Attorney would prepare the case and present it in court.

As a result of an interview with the Rent Review Officer and Inquiry Officer involved, our investigator learned that the complainant had not been advised of her options under the Act. In fact, the only advice she was given was to pay her rent plus 6%.

During the course of the investigation, the Ombudsman formed the tentative conclusion according to the terms of The Ombudsman Act, 1975, that it was "unreasonable" for the Inquiry Officer of the Rent Review Office to have omitted to explain to the complainant the options available to her under The Residential Premises Rent Review Act. The Ombudsman also formed the tentative conclusion that the omission to consider prosecuting the landlord in this case was in accordance with a policy or practice that was, or may have been, "unreasonable".

Accordingly, the Ombudsman reported his possible conclusions to the Deputy Minister of Consumer and Commercial Relations, together with his possible recommendations, which were as follows:

It would appear that it might be open to me to recommend in accordance with section 22(3)(g) of The Ombudsman Act, 1975, that the Ministry should do everything it can to ensure that landlords and tenants have all their options under The Residential Tenancies Act explained to them.

It would also appear that it might be open to me to recommend in accordance with section 22(3)(b) of The Ombudsman Act, 1975, that the Ministry should cause the Residential Tenancy Commission to change its apparent practice of not prosecuting violations, and upon receipt of a complaint, commence a prosecution for violations under The Residential Tenancies Act where appropriate.

Because in his view the Ministry might be "adversely affected" by his possible conclusions and recommendations, the Ombudsman accorded to it the opportunity to make representations pursuant to section 19(3) of The Ombudsman Act, 1975.

In its response to the Ombudsman's first conclusion, the Ministry agreed that the Inquiry Officer of the Rent Review Office omitted to advise the complainant of the option of filing an application requiring the landlord to justify the rent increase. However, in the Ministry's view, the complainant was in fact in a more advantageous position having taken the advice given. The Deputy Minister added that the duty of care in giving advice to the public does not extend to advising the public on alternative courses of action as would a solicitor advising his client. He felt that it was not unreasonable for the Inquiry Officer to advise the complainant as was done.

The Ombudsman felt that the Inquiry Officer had the task of giving out information about The Residential Premises Rent Review Act, and must have known that persons making inquiries would place reliance upon what was said. Our investigation revealed and the Ministry confirmed that the Inquiry Officer gave out incomplete information in response to the complainant's inquiry. Moreover, the Executive Director of the Rent Review Program confirmed that the normal policy was to point out the full range of options. The Ombudsman noted that the Ministry did not claim that the Inquiry Officer did not have the necessary skill and competence to follow such a policy direction or to give such advice. Therefore, the Ombudsman was unable to agree with the Ministry's position that the duty owed by Inquiry Officers to members of the public does not extend to advising on alternative courses of action.

Accordingly, the Ombudsman determined, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that it was "unreasonable" for the Inquiry Officer to have omitted to explain to the complainant the options available to her under The Residential Premises Rent Review Act.

In response to the Ombudsman's first possible recommendation, the Ministry concurred that:

...the Residential Tenancy Commission (should) do everything it can to ensure that landlords and tenants have all their options under The Residential Tenancies Act explained to them.

In response to the Ombudsman's second tentative conclusion the Ministry stated in part that "clearly, the increased rent as set out in the landlord's notice of increase breached the statute and was uncollectable". However, it was the position of the Ministry that the Rent Review Officer appeared to have had no jurisdiction in this matter, as no application was in fact filed by either the landlord or the tenant.

The Ombudsman noted that section 17(1)(a) of The Residential Premises Rent Review Act expressly provides that an attempt to contravene the Act is a violation of the Act, punishable on summary conviction. The Minister of Consumer and Commercial Relations is responsible for the administration of the Act.

The Ombudsman reviewed the facts of the case and the Ministry's representations and determined pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the omission by the Rent Review Program to consider prosecuting the landlady in this case was in accordance with a policy or practice that was "unreasonable".

In response to the Ombudsman's possible recommendation that the Ministry should cause the Residential Tenancy Commission to change its apparent practice of not prosecuting violations, and upon receipt of a complaint, commence a prosecution for violations where appropriate, the Ministry stated:

The Commission, as a quasi-judicial body, places itself in a difficult position if it prosecutes violators of the Act, when it may be required to deal with and adjudicate upon applications for civil remedies involving the same parties. It is important for the Commission, if it is to develop credibility in the eyes of the public, to be, and to be perceived to be, impartial and objective. The Commission is also concerned that even if prosecutions were laid by the Ministry of Consumer and Commercial Relations and not the Commission itself, the Commission would, in the eyes of the public be perceived to be carrying out the prosecution since the Ministry would undoubtedly be acting on the reports of the Commission. It may be difficult for the public to effectively separate the Commission from the Ministry and the credibility of the Commission will thereby be affected...the Commission carries among other functions a considerable number of mediations in which its credibility is all important.

The Ombudsman carefully considered these representations by the Ministry and while he understood the concerns expressed, he did not share in them.

The Ombudsman failed to see the difference between the Commission assisting the Crown Attorney or the complainant by providing evidence in the Commission's possession, which the Commission is willing to do, and the Commission providing information to some branch of the Ministry of Consumer and Commercial Relations which would then prosecute the violator. In either case, the prosecuting agent "would undoubtedly be acting on the reports of the Commission" with the apparent result that the Commission would be perceived in the eyes of the public to be carrying on the prosecution.

The Ombudsman noted that the Commission does not appear to be any different than a number of commissions and tribunals which are possessed of both prosecutorial and adjudicative powers.

The Ombudsman also considered section 81 of The Residential Tenancies Act and stated that it would appear that this particular section contemplates, if not implicitly requires, the Commission to investigate prosecutions of known violations of The Residential Tenancies Act.

Consequently, the Ombudsman disagreed with the Ministry's conclusion that "the other subsections deal with private disputes between parties, which, in the opinion of the Commission are better left to an individual or the Crown Attorney to initiate". He therefore recommended pursuant to section 22(3)(b) of The Ombudsman Act, 1975, that the Ministry should cause the Residential Tenancy Commission to change its apparent practice of not prosecuting violations, and upon receipt of a complaint, commence prosecution of violations under The Residential Tenancies Act where appropriate.

The Ombudsman subsequently received a letter from the Deputy Minister, in which he stated in part:

Initially we were concerned that your conclusion might cause the Residential Tenancy Commission some difficulties. Now, however, after careful consideration of your letter by the R. T. C. Board, it has been concluded that the R. T. C.'s view of its responsibilities is compatible with your recommendation.

I am therefore pleased to be able to advise you that the Residential Tenancy Commission will commence prosecutions of violations under The Residential Tenancies Act where appropriate. Should any question arise as to the responsibility or authority of the Board to commence a prosecution, I am satisfied that direction can be obtained from the Ministry of the Attorney General and that such direction will enable the Board to act in a manner that is consistent with your recommendation.

The complainant was then advised that the Ministry had agreed to give effect to the Ombudsman's recommendation and the file was closed.

MINISTRY OF
CORRECTIONAL SERVICES

DETAILED SUMMARY NO. 9

This complainant wrote to the Ombudsman concerning the difficulty which he had experienced in gaining an interview with a Justice of the Peace at one of the Ministry's correctional centres.

When interviewed, the inmate complained about the practice in effect at that institution for handling inmate requests to see a Justice of the Peace. Specifically, the complainant objected to the impeding of requests to see a Justice of the Peace by the institution's Chief Security Officer. The complainant contended that an inmate should not be denied access to a Justice of the Peace because he did not wish to disclose the nature of his concern to the institutional authorities.

Notice of the Ombudsman's intent to investigate the complaint was given to the Superintendent of the correctional centre, pursuant to section 19(1) of The Ombudsman Act, 1975. Examination of the institution's procedures for handling inmate requests to see a Justice of the Peace revealed that all such requests were first relayed to the institution's Chief Security Officer. It was the responsibility of the Chief Security Officer to interview the inmate, determine the nature of his request and take action, where appropriate, in the interests of the security of the institution. While an inmate could not be compelled to reveal the nature of his concern, it was within the discretion of the Chief Security Officer to refuse an inmate access to a Justice of the Peace.

In the course of the investigation of this complaint, our Office undertook legal research with respect to the right of access to a Justice of the Peace by an inmate in a provincial correctional institution. Based on the legal opinion rendered, discussions were held with the senior institutional authorities who agreed to re-examine their practice in this regard.

Subsequently, the institutional authorities agreed to revise the practice. Under the new procedure adopted, an inmate requesting to see a Justice of the Peace is required to place his request in a letter to the local Justice of the Peace. The letter is then forwarded to the Chief Security Officer who screens it in accordance with general Ministry policy for the handling of inmate mail. The letter is then forwarded, without delay, to the Justice of the Peace. The Chief Security Officer no longer has the discretion to deny an inmate access to a Justice of the Peace for any reason.

In view of the action taken by the institutional authorities, the file on the matter was closed.

DETAILED SUMMARY NO. 10

This complaint was made by an inmate of a Ministry jail.

The complainant stated that members of the jail staff had acted unreasonably towards him in the following circumstances:

1. A nurse failed to supply him with medication prescribed by the institutional doctor.
2. The same nurse filed a Misconduct Report in which she cited him for using profane language; he felt this was unreasonable because, although he used profane language, he had not directed his language towards any person.
3. He was not permitted yard exercise during a period when he served a misconduct penalty in segregation.
4. The Superintendent destroyed a book sent to him at the jail; he felt he should be reimbursed for the cost of the book.

Upon the Ombudsman giving notice to the Superintendent of the jail, in accordance with section 19(1) of The Ombudsman Act, 1975, various members of the jail staff provided information relevant to the complaint. The nurse named in the complaint was interviewed and the complainant's medical record reviewed. There were telephone contacts with the Superintendent and with a member of the staff of the Institutional Programs Division, Ministry of Correctional Services. An opinion on the medical aspect of the complaint was obtained from the Senior Medical Consultant, Ministry of Correctional Services. This aspect of the complaint was discussed further in an interview with the Superintendent.

The Ombudsman concluded that the nurse did not act unreasonably. The Ombudsman noted that although the jail doctor had prescribed a specific medication for the complainant, this prescription was for a limited time period, which had expired. The nurse therefore offered the complainant the only medication she could give (Aspirin) until such time as the complainant could again be seen by the doctor.

The complainant admitted using profane language during his conversation with the nurse, directly referring to her clinical judgement in providing medication. The Ombudsman therefore concluded that the complainant did make a gross insult by use of abusive language directed at the nurse as set out in section 28(c) of Regulation 243 made under The Ministry of Correctional Services Act, 1978.

The Ombudsman considered whether the complainant might have been treated unreasonably with respect to his general right to have exercise in the open air and in regard to the handling of his personal property. However, he did not find it necessary to reach any conclusions on these matters because the actions taken by the Ministry during his investigation, satisfactorily resolved them.

The Ministry of Correctional Services' policy concerning outdoor exercise states that "every inmate, unless he is found to be plotting to escape or attempts to escape, or is misconducting himself shall be allowed, if weather permits, to have daily exercise in the open air..." The Superintendent had interpreted this policy to mean that inmates serving misconduct penalties would not be permitted outdoor exercise. The Executive Director, Institutional Programs, Ministry of Correctional Services, clarified the Ministry's policy in a memorandum to all Superintendents, stating that inmates who are serving penalties for misconducts should have exercise unless their behaviour poses a threat to the security and safety of the institution.

In the final aspect of this complaint, a magazine, mailed to the complainant, was found to contain a note to the effect that the complainant would be supplied with drugs in the jail. The Superintendent told the complainant he would not allow him to have this magazine and a heated discussion ensued, ending when the Superintendent tore the magazine in half. The Superintendent acknowledged that his act was contrary to the Ministry of Correctional Services' policy regarding the handling of inmates' personal property. In this circumstance the usual practice would be storage of the inmate's property until his release or transfer. The Superintendent mailed a money order to the complainant at the institution where he then resided, stating in a covering letter that this amount was to compensate him "for the magazine destroyed by me in error".

DETAILED SUMMARY NO. 11

An inmate in a Ministry detention centre wrote to the Office of the Ombudsman complaining about the Ontario Board of Parole's decision to suspend and subsequently revoke his parole. The inmate contended that the Board's decision was unfair, in view of his short tenure on parole and the minimum briefing which he had received with respect to the rules imposed upon him at the Community Resource Centre where he was residing while on parole.

The complainant was interviewed by an investigator and advised that the revocation of parole stemmed from the results of a meeting the complainant had with his parole officer and the Director of the Community Resource Centre. The parole officer's decision to suspend parole was based on the complainant's unsatisfactory performance in the Community Resource Programme and the complainant's failure to report a sum of money representing incentive allowance which he had earned during his incarceration. One of the conditions of the complainant's parole was that he report all income to the staff of the Community Resource Centre.

Under the current Ontario parole system, the ultimate decision to revoke parole remains with the Board itself, which makes a careful examination of the circumstances leading to suspension of parole. In this case the decision of the Board to revoke parole was rendered and the inmate was returned to the institution from which he was released on parole.

The Ministry was then given written notification of our intent to investigate pursuant to section 19(1) of The Ombudsman Act, 1975. Copies of the complainant's parole documentation were obtained and both the Chairman of the Ontario Parole Board and the Director of the Community Resource Centre were invited to present their views in this matter.

Documentation revealed that prior to being released on parole, a letter was sent to the complainant by the Director of the Community Resource Centre outlining four conditions upon which he would be accepted into their programme. The inmate agreed to these conditions and these conditions were made an integral part of the parole conditions as outlined on the parole certificate. Upon release on parole, the complainant signed his parole certificate pledging himself to honestly comply with the conditions of his parole.

In a reply from the Director of the Community Resource Centre, the Ontario Parole Board was advised that the purpose of the meeting between the complainant, the Director and the parole officer was merely to confront the complainant with his failure to report the said sum of money. At that particular time, no plans to suspend parole had been put into motion. However, at the time of the meeting, the complainant stated that he wished to stay in the Community Resource Centre to enhance his chances for parole, to have a roof over his head, and to be closer to his girlfriend.

Based upon the complainant's attitude, it was the parole officer's decision to suspend parole. Follow-up reports revealed that the complainant was of the opinion that he should be allowed to come and go freely at the Community Resource Centre and not have to earn his way through the privilege system like other residents.

In a response received from the Chairman of the Ontario Parole Board, the Ombudsman was advised that the rules and expectations of the Community Resource Centre were explained to the complainant on two occasions by staff members. In addition, the Ombudsman was advised that the complainant had been granted a previous parole wherein he resided at the same Community Resource Centre. During that term of parole, the complainant was returned to the institution because of a further criminal charge. It was the Chairman's position that the complainant specifically breached one of the conditions of parole and resisted most expectations as set out by the Community Resource Centre. Therefore, the Board could no longer support such a lack of cooperation on the part of the complainant when it had been part of the reason the Board was willing to take a further risk in spite of the complainant's earlier breach of parole.

After carefully considering the results of the investigation, the Ombudsman concluded that the Ontario Board of Parole did not act unreasonably in revoking this complainant's parole.

DETAILED SUMMARY NO. 12

The Superintendent of a detention centre advised this Office that one of his staff members had opened an Ombudsman envelope while processing incoming inmate mail.

The Ministry of Correctional Services was given written notification of the Ombudsman's intention to investigate the matter pursuant to section 19(1) of The Ombudsman Act, 1975.

Our investigation revealed that an Ombudsman's envelope addressed to an inmate who was no longer incarcerated at the institution had been improperly, although inadvertently, opened during the regular processing of the incoming inmate mail.

In accordance with section 19(3) of The Ombudsman Act, 1975, the Ombudsman's possible conclusions and recommendations were set forth in letters to the Superintendent of the institution and the Deputy Minister of Correctional Services and all government employees who might be adversely affected. It was recommended that:

1. When an inmate has been released from custody and a letter to him from the Ombudsman has been opened by a Ministry employee, the Superintendent should forward him the letter with an accompanying letter explaining the circumstances surrounding the opening.
2. If the inmate is still in custody, a senior staff member interview the inmate involved and explain the circumstances of the letter opening.
3. The mail sorting practice be altered so that Ombudsman correspondence be separated from the general mail before the opening of inmate mail begins.
4. A written Occurrence Report about an incident involving the opening of an Ombudsman letter be addressed to the attention of the Superintendent with a copy to the Ombudsman.

The Ministry accepted these recommendations. A memorandum from the Ministry was addressed to all Superintendents of provincial correctional institutions outlining the procedures to be followed in the event that an Ombudsman's letter should be opened. It further directed that the local Standing Orders for each institution be amended to include these procedures.

MINISTRY OF
THE ENVIRONMENT

DETAILED SUMMARY NO. 13

The complainant, a homeowner, came to us with a complaint against the Ministry of the Environment. She contended that in February 1975, her basement as well as some neighbours' basements were flooded due to the backup of sewers, causing extensive damage to her property. The complainant felt that she should receive compensation for the damage caused to her basement and assurances that it would not recur.

After receiving a response from the Ministry to our notification of intent to investigate this complaint, our file on this matter was assigned for investigation.

Our investigation showed that although the sewage system is operated by the municipality it had been financed and constructed under contract by the Ministry of the Environment.

During the course of the investigation the former Ombudsman came to the possible conclusion that the Ministry had acted "unreasonably" in not taking into consideration at the time of the construction of the municipal sewage treatment system the height of the system's manhole covers. There was evidence to indicate that at the time of construction, some of the manhole covers were installed at a height of 258 feet above sea level. This was well below the previous record flood level of 264 feet above sea level set by Hurricane Hazel in 1954. Also these covers were not sealed. Both of these factors combined to let surface water into the sewage system during the storm of February 1975, when the flood level reached 260 feet above sea level. This contributed to the overburdening of that system. The height of the covers was subsequently increased by one foot.

The Ombudsman also came to the possible conclusion that it was "unreasonable" for the Ministry of the Environment not to have informed the complainant, whose home was located in a "flood plain" area, of the need to have check valves installed as a precaution against possible flooding of her basement.

Based on the above possible conclusions, the Ombudsman was of the opinion that it was open to him to recommend that the Ministry pay to the complainant a sufficient amount to compensate her for damage done to her basement and furniture.

Since the Ministry could be adversely affected by his possible conclusions and recommendation, the Ombudsman afforded the Ministry, pursuant to section 19(3) of The Ombudsman Act, 1975, an opportunity to address itself to his possible conclusions and recommendation. Representations were received on behalf of the Ministry by letter. Briefly, the Ministry could not agree that it had acted unreasonably in respect of either of the two possible conclusions.

The Ombudsman carefully considered these representations in light of the investigation conducted.

It also came to the Ombudsman's attention that the designers of the sewage system had recommended to the Ministry that watertight manholes be installed to provide the system with flood water protection; however, in the system's final design and construction these watertight manholes were not provided. Furthermore, the consultant's report on the system had suggested that, during peak flood periods, the normal gravity overflow at the pumping station would not be able to function (a back flow preventer would close), so by-passing would have to be by pumped discharge and this would necessitate an adequate capacity in the pumping units. The report went on to say that this adequate capacity had not been provided.

In view of the above, the Ombudsman concluded, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that it was "unreasonable" for the Ministry of the Environment not to have taken into consideration, at the time of the construction of the municipal sewage treatment plant, the height of the manhole covers. He also determined that it was "unreasonable" for the Ministry not to have informed the complainant of the need to install check valves as a precaution against possible flooding of her basement.

The Ombudsman therefore recommended, pursuant to section 22(3)(g) of The Ombudsman Act, 1975, that the Ministry of the Environment pay to the complainant an amount to compensate her for the damage done to her basement and furniture as a result of the flooding.

Subsequently, the Ministry informed us that it had offered the complainant the sum of \$3,500.00 as compensation. Although the Ministry did not consider itself to be liable in this case, it recognized that she "would have had some chance of success if she had sued".

After confirming that she had accepted the Ministry's offer our file on this matter was closed.

MINISTRY OF
GOVERNMENT SERVICES

DETAILED SUMMARY NO. 14

This complainant complained of a decision rendered by the Ministry of Government Services which also involved the Liquor Control Board of Ontario.

He contended that it was unreasonable for the Employee Benefits Branch of the Ministry of Government Services to require him to repay \$622.29 which was paid to him in error by the Liquor Control Board of Ontario. The complainant worked as a re-employed pensioner with the Liquor Control Board of Ontario, and his earnings from October 1st, 1974 to June 30th, 1975, had exceeded the amount he was permitted to earn as a re-employed pensioner. He claimed that he was never informed of the stipulations governing the salaries of such individuals by either the Liquor Control Board of Ontario or the Ministry of Government Services, and that had he been properly advised the overpayments would not have occurred.

Having received a position statement from both the Board and the Ministry in response to our notice of intention to investigate this complaint, the file was assigned to an investigator.

The investigation included interviews with the complainant, the Manager of Pension and Insurance Benefits, Employee Benefits Branch, Ministry of Government Services, a solicitor for the Liquor Control Board of Ontario, and the Records Supervisor, Liquor Control Board of Ontario. In addition, the investigation consisted of telephone conversations with five Liquor Control Board of Ontario store managers.

The complainant was superannuated from the Liquor Control Board of Ontario in 1969, at which time re-employment without penalty was limited to 130 days a year. In July, 1971, The Public Service Superannuation Act was amended and a money limit was established whereby the total of a re-employed pensioner's salary over any three-month quarter, plus his superannuation allowance for the same period, could not exceed three times his last monthly salary before retirement. If it did, he would suffer the penalty of having his allowance reduced by the amount of the excess.

The complainant earned less than the applicable maximum during the period from 1971 to 1973. However, in March, 1976, in response to a routine check by the Ministry of Government Services with other Ministries on apparently inactive re-employment cases, the Liquor Control Board of Ontario informed the Ministry of Government Services that the complainant had been overpaid \$432.45 for the quarter ending December 31st, 1974, and \$189.84 for the quarter ending June 30th, 1975. Hence, in June, 1976, the Ministry informed the complainant of his overearnings, and that it would be deducting \$5.00 a month from his pension cheque until the total amount of the overpayment was recovered.

During an interview with the Manager of Pension and Insurance Benefits, Ministry of Government Services, the investigator was informed that in 1974, the Ministry initiated a program whereby it notified every employee upon retirement, by letter, of his or her pension program and of section 16 of The Public Service Superannuation Act. However, prior to

1974, the Manager stated that it was the responsibility of the Personnel Department of the Ministry or Board which employed the retiring individual to explain the benefits, et cetera available upon retirement. It depended on the individual Ministry or Board whether an "exit interview" was conducted, or a letter was written to the retired individual advising of his retirement plan.

The solicitor for the Liquor Control Board of Ontario advised the Office of the Ombudsman that it had no recognized process in 1969, the time of the complainant's retirement, of advising employees of their pension plans and the fact that they were limited as to the amount of money they could earn as re-employed pensioners. There were no exit interviews conducted at that time. However, when section 16 of the Act was amended, in July, 1971, the Board sent out a memorandum to all department heads and store managers, explaining the money limit. The solicitor stated that at that time it was Board procedure for a store manager to make employees aware of the content of the memorandum, and to then report to Head Office on a form Q-30, information relating to how many hours a week a retired pensioner was working. Head Office was then to report the data quarterly to the Ministry and this is how overpayments would come to light.

It was ascertained that the store managers' method of making employees aware of various memoranda was to post the memoranda on a bulletin board and the employees would then initial them. Our investigator contacted the store managers of the stores in which the complainant had worked while re-employed by the Liquor Control Board of Ontario, but was unable to obtain any evidence regarding whether or not the memoranda relating to the amendment to section 16 of the Act were posted.

The required data regarding the complainant's earnings were regularly reported to the Ministry of Government Services until the quarter ending June 30th, 1973. However, the Liquor Control Board of Ontario did not report again to the Ministry until August 12th, 1975, at which time the overpayment of \$189.84 regarding the period ending June 30th, 1975, was noted. In January, 1976, the Ministry wrote to the Personnel Branch, Liquor Control Board of Ontario, requesting that it submit the complainant's quarterly earnings for all the quarters subsequent to June 30th, 1973. The Liquor Control Board of Ontario submitted the required information in March, 1976, and the Ministry of Government Services proceeded to advise the complainant of his overearnings.

The reason stated by the solicitor for the Liquor Control Board of Ontario as to why its Payroll Department did not report the complainant's earnings to the Ministry between June, 1973 and August, 1975, was that the complainant did not advise the store managers of his status, and it therefore did not submit the required Q-30 forms to payroll. It was the Ombudsman's opinion, however, that as the managers were aware of his status up until June 30th, 1973, there would seem to be no good reason why they should not have continued to submit the required information to Head Office, Liquor Control Board of Ontario, after this date.

Thus, the Ombudsman formed the view that it was open to him to conclude that, firstly, the Employee Benefits Branch, Ministry of Government Services and the Liquor Control Board of Ontario acted

"unreasonably" within the meaning of section 22(1)(b) of The Ombudsman Act, 1975, in failing to ensure that the complainant was adequately informed of the fact that under section 16 of The Public Service Superannuation Act he was limited as to how much he could earn as a re-employed pensioner, and the details pertaining thereto. Further, the Ombudsman tentatively concluded that the Liquor Control Board of Ontario acted "unreasonably" in failing to report the required information regarding the complainant's earnings to the Ministry of Government Services for the period between the quarter ending June 30th, 1973, and the quarter ending December 31st, 1974.

The Ombudsman tentatively recommended that the Ministry of Government Services take such action as was necessary to refund to the complainant the amount already deducted as a result of the overpayment, and discontinue the deductions in the future, and that the Liquor Control Board of Ontario, in the future, promptly report to the Ministry of Government Services, on a quarterly basis, the required data regarding the earnings of re-employed pensioners. The Ombudsman reported his possible conclusions and recommendations to the Chairman of the Liquor Control Board of Ontario and the Deputy Minister of the Ministry of Government Services.

Because in the Ombudsman's view both the Board and the Ministry might be "adversely affected" by his possible conclusions and recommendations, he accorded to them the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of The Ombudsman Act, 1975. Representations were received on behalf of the Board and the Ministry. In short, neither the Board nor the Ministry could agree that its actions or omissions in the matter had been unreasonable.

The Board maintained that the complainant was properly informed of his rights and position as a re-employed pensioner but that he failed to recognize or ignore the information. The Ministry remained of the view that since prior to 1974 the responsibility of informing a retiring employee of his entitlements rested with the employee's Ministry or Board, it was up to the Liquor Control Board of Ontario to inform the complainant of the 1971 amendment to The Public Service Superannuation Act and the consequences thereof. The Deputy Minister advised that in both 1969 and 1971, the Director of the Pension Funds Branch (the predecessor of the Employee Benefits Branch) informed all personnel directors of the 1969 and 1971 amendments and requested that he be advised in all cases where a person in receipt of a pension under The Public Service Superannuation Act was re-employed. However, the Branch was not advised by the Liquor Control Board of Ontario of the complainant's re-employment until May, 1973.

The Ombudsman carefully considered the representations of the Liquor Control Board of Ontario and the Ministry of Government Services in light of the investigation conducted. He obtained a statutory declaration in which the complainant swore that he was never informed by the Liquor Control Board of Ontario, the Ministry of Government Services, the Pension Funds Branch, or any other agency, or individual employed by such agency of the Province of Ontario of the fact that under section 16 of The Public

Service Superannuation Act he was limited as to how much money he could earn as a re-employed pensioner without having his pension reduced.

It was the Ombudsman's view that the Board ought to have had a more reliable method whereby it informed employees upon retirement of their pension program and of section 16 of The Public Service Superannuation Act. He was also of the view that had the Board more promptly reported to the Ministry of Government Services, on a quarterly basis, the required information regarding the complainant, at least one of the overpayments might not have occurred.

Although it appeared that the Liquor Control Board of Ontario was the body primarily responsible for informing its re-employed pensioners of the 1971 amendment, and therefore for omitting to ensure that the complainant was adequately informed of it, the Ombudsman was of the opinion that the Ministry of Government Services was also responsible in that it did not follow up its directive to government agencies concerning the earnings of pensioners. As well, it was his view that the Ministry should share the responsibility for the complainant's predicament because it was in a position to rectify the situation.

Accordingly, the Ombudsman determined that the actions and omissions of the Liquor Control Board of Ontario and of the Ministry of Government Services in this regard were "unreasonable" within the meaning of section 22(1)(b) of The Ombudsman Act, 1975. He therefore recommended, pursuant to section 22(3)(g) of The Ombudsman Act, 1975, that the Ministry of Government Services take such action as was necessary to obtain the authority to refund to the complainant the amount already deducted as a result of the overpayment, and to discontinue future deductions, and that the Liquor Control Board of Ontario, in the future, promptly report to the Ministry of Government Services, on a quarterly basis, the required data regarding the earnings of re-employed pensioners.

The Ministry responded by letter that it was pleased to inform the Ombudsman that the officials of the Liquor Control Board of Ontario had agreed to refund the total amount of the overpayment which the complainant was being required to repay to the Ministry. The complainant was refunded the amount which had been withheld from his pension in recovery of the debt and future deductions were immediately discontinued. Also, the Liquor Control Board agreed, without hesitation, to accept the Ombudsman's recommendation directed to it.

MINISTRY OF
HEALTH

DETAILED SUMMARY NO. 15

This complainant wrote a letter and complained of a decision made in his case at a central Ontario psychiatric hospital. He claimed that he was transferred to a maximum security unit in another psychiatric facility because another patient alleged he had threatened an elderly woman patient and members of the staff at the central Ontario psychiatric hospital. The complainant contended that his transfer was not justified because the allegation was false.

The complainant was interviewed at the maximum security facility and initial information was obtained from his clinical record and from the Medical Director of the central Ontario psychiatric hospital. In a letter pursuant to section 19(1) of The Ombudsman Act, 1975, the Deputy Minister of Health was advised of our intention to investigate this complaint. He was invited to provide a statement of his Ministry's position on the complaint. The Deputy Minister responded by letter.

Our investigation revealed that the complainant's transfer to the maximum security facility occurred for reasons other than his alleged assaultive behaviour. Therefore, the Ombudsman felt the complainant's specific contention could not be supported. However, the Ombudsman came to the possible conclusion that it might be unreasonable for an allegation, made by another patient, to remain on the complainant's clinical record because this allegation was not investigated and the complainant was not given an opportunity to refute the allegation.

As it appeared that the attending physician and the Hospital Administrator might be "adversely affected" by our possible conclusion, these individuals were given an opportunity, pursuant to section 19(3) of The Ombudsman Act, 1975, to make representations concerning our possible conclusion and a possible recommendation. The attending physician and the Hospital Administrator made a joint representation which was carefully considered at a conference in this Office. Essentially, they took the position that an attending physician exercises clinical judgement when recording information that might be relevant to a patient's care and, by its very nature, a clinical record is a compilation of reports and observations from a variety of sources which may include the patient's family, staff and, on occasion, the reports of other patients. They submitted that although it might not be feasible to investigate an incident, the treatment staff may make a clinical judgement that the information reported may be relevant to a patient's care. Further, they felt a patient could be reassured that the contents of a clinical file are protected by a provision in The Mental Health Act governing confidentiality.

The Ombudsman was in agreement with the representation made by the attending physician and the Hospital Administrator. The Ombudsman felt that the attending physician's notations concerning the allegation made against the complainant were relevant to his psychiatric assessment and management, as well as to the safety of other patients and public safety. However, although the contents of a clinical record are kept confidential, the Ombudsman felt that clinical records are used as a reference to

facilitate a number of administrative and therapeutic processes. Thus, it was conceivable that entries made on the complainant's clinical record might influence his security classification at the maximum security facility, the assessment of his potential for aggressive behaviour, his suitability for transfer to a less secure psychiatric unit, his potential for discharge through any application he may make to the Regional Review Board, and his suitability for community or group residences. The Ombudsman felt that great care should be taken to ensure that if it was not feasible to investigate an allegation, it should be clearly stated on the record that the allegation was not substantiated.

The Ombudsman made a report to the Deputy Minister of Health concluding, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that it was unreasonable for the reports on the complainant's alleged misbehaviour to remain on his clinical record without qualification. He recommended, pursuant to section 22(3)(g) of The Ombudsman Act, 1975:

1. That a "Caution" sheet be attached to the complainant's clinical records, both at the central Ontario psychiatric hospital and the maximum security facility, to state that the allegation made by the other patient was not investigated and therefore unsubstantiated.
2. That the Ministry of Health take suitable steps to ensure that the staff members of provincial psychiatric hospitals take care, when recording allegations made against patients, to clearly indicate whether or not the allegation was investigated or substantiated.

The Deputy Minister gave full consideration to the Ombudsman's recommendations, inviting input from all of the provincial psychiatric facilities. He advised this Office by letter that these recommendations were acceptable and that the psychiatric hospitals had been instructed to follow these recommendations. The complainant was advised accordingly.

DETAILED SUMMARY NO. 16

The complainant wrote the Office of the Ombudsman complaining that OHIP had refused to cover the cost of air ambulance services used to transport her daughter from a city in Ontario to a hospital in Toronto.

In 1978 the complainant's daughter was sent to the Sick Children's Hospital in Toronto by the hospital in her home city for a bone scan. The purpose of this scan was to determine if a tumor, which had been partially removed surgically, was progressing. The complainant accompanied her daughter on the trip. All costs were paid by OHIP.

Seven months later the complainant and her daughter again travelled to Toronto for a follow-up bone scan. Receipts were submitted to OHIP for the second trip. The complainant was initially advised by the Manager, Air Ambulance Operations, that the travel expenses did not fit within the criteria for reimbursement as her daughter was not confined to a stretcher, did not require continuing care by a qualified medical attendant, and did not require ambulance service to and from the airport to the hospital. The

complainant wrote back to the Ambulance Services Branch expressing dissatisfaction with this decision. Partial payment was subsequently forwarded to the complainant because of conflicting information given to her by the hospital in her home city.

In reply to our notice of intention to investigate this complaint a statement was received from the Director, Ambulance Services Branch.

Our preliminary investigation revealed that there appeared to have been a delegation of authority from the General Manager of OHIP to the Director of the Ambulance Services Branch although The Health Insurance Act does not provide for decisions on claims to be made by officials other than the General Manager. It also became apparent that although the decision to deny full reimbursement of the complainant's claim was made on behalf of the General Manager, the complainant was never advised of the statutory appeal procedures available pursuant to sections 23 and 24 of The Health Insurance Act. Accordingly, our investigator advised the complainant that she should again write to the Ministry of Health expressing her dissatisfaction with the denial of reimbursement for the total claim.

Following a number of contacts with the Director, and a member of the Ministry's legal staff, the Director of General Investigations wrote to the General Manager of OHIP relating this information.

The complainant then contacted the Office advising that she had received a decision from the Secretary of the Medical Eligibility Committee with respect to her request for a review. The Committee did not view the transportation as a medically essential ambulance service and advised that should the complainant wish to appeal its decision she would be entitled to a hearing by the Health Services Appeal Board.

Our Office subsequently received a response from the Ministry of Health in which it advised that in future:

...in any instance where it is brought to the attention of the General Manager, Health Insurance Division, or the Ambulance Services Branch, either orally or in writing, that a claimant is in dispute with a decision of the General Manager or the Ambulance Services Branch, the claim will be submitted to the Medical Eligibility Committee for review. The current practice of the Committee is to advise claimants, on the rejection of their claims, of their right to further appeal to the Health Services Appeal Board. The notice has taken the form of that sent to ...(the complainant). This practice will be changed to reflect the requirements of Section 24 of The Health Insurance Act. In the future, the Secretary of the Medical Eligibility Committee will make a recommendation to the General Manager respecting medical necessity. The General Manager shall then inform the claimant of his entitlement to a hearing before the Health Services Appeal Board, as set forth in section 24...

As the complainant had advised the Office that she had requested a hearing before the Health Services Appeal Board, the Ombudsman pursuant to section 15(4)(a) of The Ombudsman Act, 1975, lacked jurisdiction to further investigate the complaint. Accordingly, our file on the matter was closed.

MINISTRY OF
HOUSING

DETAILED SUMMARY NO. 17

The complainant, on behalf of himself and nine of his neighbours, objected to a decision of the Minister of Housing directing the Niagara Escarpment Commission (N.E.C.) to issue a development permit to another neighbour for a husky kennel operation.

The N.E.C. staff had recommended that the application not be approved because although the location was designated "rural", in fact it had an urban character; the kennel would introduce an incompatible land use into a developed area, which might well give rise to complaints about noise and appearance. Apart from this, the N.E.C. staff reported that there appeared to be little conflict between the proposal and the Commission's policy and objectives.

After consultation with the Town, the N.E.C. notified the applicant that his application was approved subject to seven conditions. The complainant appealed the decision to the Minister of Housing, who appointed a hearing officer. The hearing officer heard submissions from all who wished to be heard, and received a petition with ninety-eight signatures opposing the kennel operation. He concluded that the N.E.C. was incorrect in approving the issuance of the development permit. He pointed out that the kennel was an incompatible use, as well as an "obnoxious use" according to the Official Plan, and appeared to be prohibited by the noise by-law. A building permit had been improperly issued to the applicant. He felt that although the applicant might suffer a loss in relocating the kennel, the neighbours would suffer a greater loss in the depreciation of their property.

The hearing officer recommended that the applicant be given a reasonable time to relocate, but recommended against permitting the construction of even a temporary kennel building.

The Minister of Housing disagreed with the hearing officer and directed the Commission to issue a development permit. He concluded that the proposal conformed to the rural designation and intent of the Official Plan; the Town had supported the proposal; and the conditions attached to the permit should abate the potential noise problem satisfactorily.

Following an exchange of correspondence with the Minister, the complainant wrote our Office, submitting that the conditions attached by the Minister were insufficient to meet the noise and visual impact caused by the kennel operation.

During the course of the investigation, attempts were made to determine if the matter could be resolved. Ministry officials undertook to have an engineer visit the kennel site to determine if further improvements could be suggested by the Ministry which might be voluntarily complied with by the kennel operator. The Ministry subsequently indicated that it could find no solution to the noise problem.

Since it appeared to the Ombudsman that there existed sufficient grounds for the making of a report or recommendation that could "adversely

affect" the Minister, pursuant to section 19(3) of The Ombudsman Act, 1975, the Ombudsman afforded the Minister the opportunity to make representations concerning the following possible conclusion:

It would appear that it might be open to me to conclude that your decision to approve the application is, in the words of The Ombudsman Act, 1975, "wrong", in spite of the conditions attached.

Due to the topography and the fact that the husky team must be tethered outside at all times and in all weather, the landscaping and screening conditions which were attached are insufficient to meet the legitimate concerns addressed by the (complainants) with respect to the noise and the visual impact. The inadequacy of these conditions is demonstrated by the fact that the (kennel operators) have been successfully prosecuted under a local noise by-law. The noise and unsightliness were considered by the Commission and the hearing officers as well as yourself as evidenced by the final conditional approval, however, it is difficult to conceive of any conditions that would have been satisfactory.

The Minister submitted that his decision was not "wrong." He contended that, as the escarpment was not affected by the use of the property as a kennel, the matter was essentially a local one. The decision was consistent with municipal land use policy which designated the area as "rural". Factors which were considered by the Minister included the initial approval of the Commission, the issuance of a licence by the Town and the absence of an objection by it to the application, as well as the substantial implementation of the landscaping plan approved by the Commission. The Minister submitted that the conditions attached to the decision took into account all reasonable concerns raised, and that local by-laws dealt with the noise problem.

A further meeting was held between representatives of the Ombudsman's Office and the Ministry of Housing. Discussions were entered into with the Ministry to ascertain if the Ministry was prepared to either purchase the property on which the kennel was located, or to compensate the owners for moving the husky operation to a more suitable place. The Ministry officials indicated that the Ministry was not prepared to purchase the property or assist in the cost of relocation, nor could the Ministry come up with further suggestions as to how the noise and unsightliness could be reduced.

As a result of further investigation, the Ombudsman determined that his subsequent possible recommendation might adversely affect the Minister of Housing. The possible recommendation was communicated to the Ministry as follows:

that the Ministry of Housing investigate the impact of the noise and visual problems caused by the husky operation ... on the property values of the complainants, and ... provide me with a written report of the results of such investigation. Should the investigation disclose that property values have in fact been adversely affected, it would be my further recommendation that

the Ministry make ex gratia payments to the complainant property owners to compensate them for the amount of such devaluation.

The Minister replied to the effect that there was, in his opinion, no evidence to support the conclusion that the decision in this matter was "wrong." He also stated that a site inspection had been carried out and that a further investigation by the Ministry could serve no useful purpose.

The Ombudsman was of the view that although the conditions attached to the permit were sincerely intended to reduce the visual impact and meet the noise problem, they were inadequate. For example, although it was a condition that the dog kennel building be insulated, this was of no assistance in reducing the noise of husky dogs which must be kept outside. The landscaping plan which the Minister attached as a condition was virtually of no assistance in reducing noise level and visual impact due to the topography.

Given the topography and the nature of the husky operation, the Ombudsman was unable to conceive any better conditions which the Ministry might have attached. The Ombudsman commented that it may well be that the hearing officer took this into account, when he recommended to the Minister that the decision of the N.E.C. to issue a permit be reversed.

The Ombudsman concluded, pursuant to section 22(1)(d) of The Ombudsman Act, 1975, that the Minister of Housing was "wrong" when he directed that a development permit be issued, subject to conditions which he genuinely believed would safeguard the neighbours' interests, but which were inadequate and ineffective.

The Ombudsman determined that the Minister of Housing had acted in good faith throughout. Even if the Minister were authorized by special legislation to reconsider the matter, neither the Ministry nor the Ombudsman could conceive of any useful conditions which might be imposed. The Ombudsman also considered the fairness of such a possible recommendation as it related to the kennel operators, given that they too had acted in good faith, and had complied with the conditions.

On the other hand, the Ombudsman had some evidence to suggest that property values of at least one of the complainants had been adversely affected by the husky operation. In all the circumstances, the Ombudsman recommended pursuant to section 22(3)(g) of The Ombudsman Act, 1975, that the Ministry of Housing investigate the impact of the noise and visual problems caused by the husky operation on the property values of the complainants, and provide the Ombudsman with a written report of the results of such investigation. Should the investigation disclose that property values had in fact been adversely affected, it was the Ombudsman's further recommendation that the Ministry make ex gratia payments to the complainant property owners to compensate them accordingly.

The Minister replied to the Ombudsman that he was unable to accept the Ombudsman's recommendation. The Minister commented that, in considering the provincial role in the kennel operator's application, it was important to note that it had been determined that the development did not

affect the Niagara Escarpment, and that therefore the application was essentially one involving local planning policies. The kennel conformed to the rural designation in the Official Plan and was considered an appropriate use by the Town and by the N.E.C. The Town did not object to the application and, in fact approved the issuance of a building permit. He felt that the Ombudsman's recommendation had such serious implications for future planning policy that he had no alternative but to oppose it. He stated that although he could not accept the Ombudsman's recommendation, he did not dismiss as inconsequential the inconvenience occasioned to the complainants by the kennel operation.

Having carefully considered the Ministry's reply in light of the investigation conducted, the Ombudsman decided against proceeding to the Premier under section 22(4) of The Ombudsman Act, 1975. In his closing letter to the complainant advising him of this decision, the Ombudsman noted that there was no question but that the Minister had acted in good faith throughout, and had directed that a development permit be issued subject to conditions which he genuinely believed would safeguard the complainants' interests, but which unfortunately did not have the result expected. He commented that it is much easier to determine that a decision was wrong with hindsight. He had learned that as a result of our Office's investigation, procedures have been devised for more detailed assessments by the Ministry in cases like this.

MINISTRY OF
INTERGOVERNMENTAL AFFAIRS

DETAILED SUMMARY NO. 18

This complaint against the Ministry of Intergovernmental Affairs was brought by a farmer who was a participant in the 1977 Ontario Youth Employment Program.

He had been misinformed that relatives were eligible employees under the terms for the Program as set out in The Youth Employment Act. Following two months of employing his younger brother for which he expected to be paid by the Program, he was advised on August 17, 1977, by letter from the Program that his brother was in fact ineligible and that his claim for the period of June 20th to July 15th, 1977, for \$101.99, would not be accepted.

After this letter, the complainant did receive a cheque for \$101.99, from the Program. Following that, the complainant submitted another claim for the period July 18th to August 26th, 1977, for \$204.00. By this time the Program realized its error in paying the first claim, requested a full refund and refused to pay the second claim.

The then Ombudsman advised the Ministry of his intention to investigate the complainant's contention that he was misled by the Ministry into believing that his brother was an eligible employee and that therefore his claim should be paid by the Program.

The Ministry's initial position was that a brochure outlining the terms and conditions of the Program was available to the complainant. Furthermore, the terms of the Act prohibited accepting the claim.

Canada Manpower Centres were distributors of the Program brochure and the investigator contacted the local Canada Manpower Office, where the complainant had obtained information about the Program. It was discovered that this Canada Manpower Office did not provide the Program brochures to the public but had its employees familiarize themselves with the brochure contents. As the Canada Manpower employee who spoke with our complainant was no longer employed there, and was unavailable for comment, it was not possible to confirm the information he had given to the complainant.

A review of the Program file on our complainant revealed a memorandum from a Program summer student who had contacted the complainant regarding his employment of his brother, after he submitted his first claim. The summer student was located and interviewed by our investigator. The student was able to recall the case and confirmed her memorandum to file that she had spoken with the Canada Manpower employee who spoke with the complainant; he did advise him that his brother was eligible as they did not reside together. The summer student also advised the complainant that the Program would pay his claim because he had been misinformed by the Canada Manpower employee. A few days later on August 17, 1977, she wrote him to advise that the Program would not accept his claim.

The Ombudsman came to the possible conclusion that the Program had been "unreasonable" in not accepting the claim as no brochure was provided

by the Canada Manpower Centre, wrong information was passed on to the complainant by a Canada Manpower employee, and an employee of the Program informed him that his claim would be accepted because of the wrong information given. Until the complainant received the Program letter of August 17, 1977, advising him that his brother was ineligible, it was reasonable for the complainant to assume that financial assistance would be provided by the Program.

In view of this the Ombudsman made a possible recommendation that the Program forgive repayment of the \$101.99 paid to the complainant, and in addition pay to him the amount he would have received from the Program up until the time he was advised that his brother was not eligible. This additional amount came to \$169.50.

Since the Ombudsman felt that the Program might be adversely affected by his possible conclusion and recommendations, he accorded it an opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of The Ombudsman Act, 1975.

Soon thereafter, the Ministry advised the Ombudsman that regardless of the misinformation provided to the complainant, the Act required that employers not hire relatives and that positions supported by Program financing be in addition to any regular positions. The Ministry's evidence indicated that the complainant's brother was hired on an "as needed" basis and the position for his brother existed regardless of assistance provided by the Program. The Ministry rejected the possible conclusion and recommendations.

The Ombudsman considered the Ministry's representations. He issued his report wherein he recommended that the Ministry forgive repayment of the \$101.99 and that the Program pay to him \$169.50 covering the amount which would have been paid until August 17th, 1977. In accordance with section 22(3) of The Ombudsman Act, 1975, the Ministry was asked what steps, if any, it planned to take to implement the recommendations.

In its response, the Ministry advised the Ombudsman that the Program had forgiven the amount already paid. However, it could not accept any recommendation to pay the complainant for any time after August 17th, 1977, as on that date he was clearly informed that his brother was ineligible.

As it appeared from the Ministry's letter that the Program believed it had already paid the complainant up until August 17th, 1977, the Ombudsman replied that in fact he had been paid only to July 15th, 1977, leaving \$169.50 unpaid. The Ministry quickly acknowledged the error and agreed to pay the additional funds, subject to approval by the Management Board.

Following the payment, the Ombudsman informed the complainant and the Ministry that the file on this matter would be closed.

MINISTRY OF
LABOUR

DETAILED SUMMARY NO. 19

This complainant wrote to the Office of the Ombudsman, alleging an inadequate investigation by the Employment Standards Branch of the Ministry of Labour. The complainant complained to the Branch that, after eighteen years of working for the same employer, installing kitchen cabinets, he was laid off and never recalled. He had been terminated without notice and without severance pay. He sought redress.

For almost a year, the complainant heard nothing further from the Branch. He then received a letter stating that his complaint had been supported and an order had been issued against his employer to pay approximately \$2,000 as termination pay in lieu of notice. He was advised that the employer had not paid the amount requested and the Branch had begun Court proceedings to enforce the order. Four months later, the complainant received another letter from the Branch advising him that he was not entitled to severance pay or notice because he had been deemed a construction worker who fell within the exemption from termination pay requirements. This decision was based on provisions in Regulation 251 and Regulation 803 passed pursuant to The Employment Standards Act and The Employment Standards Act, 1974, respectively.

The complainant requested a review, under section 49 of The Employment Standards Act, 1974, of the Branch's decision. He stated he was not a construction worker, working seasonally or day to day, but had been regularly employed for eighteen years as a carpenter-cabinetmaker. Subsequently, he was again advised by the Branch that he was not entitled to termination pay because of the exemption in the Regulations. The complainant then contacted the Ombudsman, alleging that the Branch's decision in his case was unjust and unreasonable.

Our investigation focused on two issues:

1. whether the Branch was correct in classifying the complainant as one not entitled to termination or severance pay according to the Regulations; and
2. whether the initial investigation and the subsequent review conducted by the Branch was adequate and reasonable.

Our investigation revealed that the Branch's interpretation of the Regulation in question might not be in keeping with the overall intention of the Act and Regulations. The Branch in this case gave section 2(e) of Regulation 251 a strict and literal interpretation which had serious ramifications for a very large service industry, such as major appliance and furnace installers. Further, the approach taken by the Branch in this case was not consistent with the approach taken in its Interpretation Manual regarding the interpretation of sections affecting employees working in the construction industry.

Our investigation also revealed that both decisions of the Branch, to issue the order and subsequently to withdraw prosecution of that order, were based on insufficient inquiry and consultation with the parties involved. The evidence on which the complainant was eventually disentitled was available

when the complainant first attended at the Branch to complain, had reasonable inquiry been made, and at any time after, had the complainant been contacted. Further, the decision to discontinue prosecution of the existing order was made without first contacting the complainant for further information or clarification even though the employer had made no effort to appeal or dispute the order issued.

Our investigation also revealed that the purported review under section 49 did not address the issues raised by the complainant in his request for same.

The Ombudsman came to the following tentative conclusions:

1. that the Branch, in classifying the complainant as a person caught by section 2(e) of Regulation 251, may have acted in accordance with a law or practice that may be unreasonable, unjust or oppressive;
2. that the Branch acted unreasonably in its original investigation of the claim for termination pay;
3. that the Branch may have acted contrary to law in failing to meet the requirements of natural justice;
4. that the Branch acted unreasonably in its review of its original investigation of the claim for termination pay; and
5. that the Branch acted contrary to law in not conducting a review under section 49.

As a result of the Ombudsman's investigation and the above tentative conclusions, the Ombudsman made the following tentative recommendations:

1. that the Ministry review its practice in regard to the interpretation of section 2(e) of the Regulation and develop a consistent practice in this regard, taking into account the fact that the Regulation may well not have been intended to exclude persons such as the complainant;
2. that the Ministry reconsider the law on which the decision was based, with a view to recommending amendments to the Legislature; and
3. that the Ministry, in view of all the circumstances in this particular case, consider granting an ex gratia payment.

Since the Ombudsman was aware that his possible conclusions and recommendations could "adversely affect" the Ministry and the Employment Standards Branch, he afforded them the opportunity to make representations pursuant to section 19(3) of The Ombudsman Act, 1975. Representations were received in a meeting at the office of the Deputy Minister. During this meeting, the Deputy Minister expressed his opinion that this was a case which ought to be resolved and offered to make an ex gratia payment in a reasonable amount to the complainant considering the circumstances and the events that had transpired in relation to the complainant. The Deputy Minister was not persuaded that the Branch had misconstrued the language

of the Regulation but he did feel that the Ministry should reconsider the wording of the clause in view of the comments and representations made by the Ombudsman insofar as the clause exempts repairers and installers of fixtures and equipment on premises other than those of the employer. He undertook to direct that a review of the clause be conducted by the Branch in conjunction with the Ministry's Legal Branch.

The Ombudsman carefully considered the Ministry's representations and offer to resolve the matter. He felt that the Ministry's acceptance of the possible recommendation to review the legislation adequately answered his concerns in this regard. Further, the Ombudsman felt that the Deputy Minister's acceptance of the Ombudsman's possible recommendation that an ex gratia payment be made adequately recognized the delay and inconvenience caused the complainant. The time for making an order against the employer had expired and, given that the complainant's entitlement to severance pay remained in dispute, the Ombudsman felt that an ex gratia payment to the complainant in the amount of \$1,250.00 was a reasonable resolution of the matter. A cheque was sent to the complainant by the Branch in this amount.

As the Ministry had agreed to give effect to the Ombudsman's possible recommendations, the file was then closed as resolved.

THE WORKMEN'S COMPENSATION BOARD

DETAILED SUMMARY NO. 20

The complainant contacted the Office of the Ombudsman requesting an investigation into the decision of the Appeal Board of the Workmen's Compensation Board. He was dissatisfied with the Board's decision to deny him entitlement to further benefits beyond October, 1976, for ongoing shoulder and psychological disabilities which he related to his accident in November, 1974. After determining the Ombudsman's jurisdiction to investigate the complaint, the Board was notified of the substance of the complaint.

The investigation indicated that in November, 1974, the complainant slipped while carrying a joist, striking his elbow. He consulted his family doctor who diagnosed a shoulder strain. The Workmen's Compensation Board accepted the complaint and awarded benefits. The complainant returned to work in June of 1975, at which time his benefits were terminated.

Soon after his return to work, he sustained a blow to his head while in the course of his employment. This accident was covered under another claim number and benefits were paid until November 17, 1975. Temporary total benefits were then restored under the first claim because of ongoing shoulder problems until January, 1976, when he again returned to work.

In reaching his conclusions the Ombudsman noted the following information. The worker sustained a minor injury in November, 1974, and the doctors who examined him recommended an early return to work. When the complainant was again examined in November, 1976, the doctors found no specific pathology to explain his shoulder pain. The orthopaedic surgeon who examined him found that there was no relationship between the complaint of right shoulder disability and the original accident. The orthopaedic surgeon who examined him in November, 1977, at the request of his family doctor again found little objective evidence of disability and felt that the ongoing complaints were likely as a result of the normal aging process. Based on this evidence, the Ombudsman found that the Board's decision to deny further benefits was not unreasonable.

With regard to the issue of entitlement for a psychiatric disability, the Ombudsman carefully reviewed the psychiatric opinions on file. The one psychiatrist who examined the complainant diagnosed depression in 1975. The psychiatrist went on to indicate that the worker had undoubtedly been unhappy prior to his accident at work and that the unhappy state predisposed the development of the post-traumatic neurosis. In late 1975, the psychiatrist reported that after a further examination, it appeared that the complainant was making good progress and had returned to normality. Given this information, the Ombudsman found that the psychiatric problems could not be considered disabling beyond October, 1976, and therefore the Board's decision to deny entitlement for benefits on psychiatric grounds was also not unreasonable.

The Ombudsman's findings were reported to the Board and to the complainant and the file was subsequently closed.

DETAILED SUMMARY NO. 21

The complainant's M.P.P. wrote on his behalf to the Office of the Ombudsman requesting an investigation of a decision of the Workmen's Compensation Board to deny entitlement to a temporary total supplement, under section 42(5) of The Workmen's Compensation Act, beyond March 22, 1978.

The investigation revealed that in August, 1976, the complainant was injured when in an effort to keep a container from overturning, he strained his back. The injury was diagnosed as a "sprained back".

By February, 1977, it was the consensus of medical opinion that the worker was capable of modified employment. Accordingly, subsequent to this date, continuing temporary disability benefits were awarded under the provision of section 41 of The Workmen's Compensation Act, which provides for full benefits when a worker has a partial temporary disability and he co-operates in attempting to return to work. The worker was then referred to the Vocational Rehabilitation Branch of the Workmen's Compensation Board.

During the period September to November, 1977, he also attended a work assessment program. A review of both the Vocational Rehabilitation Reports and the reports from work assessment revealed that the complainant severely restricted his work capabilities as he considered himself more disabled than the medical evidence expressed. It was the opinion of the counsellors that he could not meet the daily requirements of full-time employment.

The complainant was eventually granted a 15% permanent disability award and a 40% supplement under the provisions of section 42(5). These awards commenced in March, 1978, at which time his temporary total benefits ceased.

Between March, 1979 to April, 1979, the worker again attended a work assessment program. Further, arrangements were made for him to attend a third eight-week assessment program. A review of these reports regarding the complainant's assessment again revealed that his production level was below the standards set in either sheltered or competitive industry.

The 40% temporary supplement was paid until September 22, 1979, and not extended beyond this date.

The Ombudsman found the medical evidence did not substantiate that the complainant's back disability was totally disabling. Also, the work assessments conducted at the Workmen's Compensation Board's Vocational and Rehabilitation Centre and the two independent assessment centres indicated that the complainant's self-imposed restrictions, not his back disability, prevented his return to gainful employment. The Ombudsman was, therefore, unable to describe the Board's decision to limit the award to 40% as unreasonable.

However, during the course of the Ombudsman's review of the compensation claim file, it was found that the complainant sustained two previous compensable back injuries. These occurred on October 13, 1965,

and on September 2, 1966. When the worker's disability, following his 1976 injury, was assessed in December of 1978, the Pensions Medical Branch was to consider a review of his current disability based upon all his compensable back claims; however, at that time the Pensions Branch was advised that there was no documentation available with respect to any back injuries prior to 1976.

In a letter, the existence of these earlier claims was brought to the attention of the Workmen's Compensation Board by this Office and a request made that all claims be referred to the Pensions Medical Branch for their further consideration.

In addition, it was noted on the Board's file that the worker received temporary disability benefits at the weekly maximum rate of \$216.35 following his accident in August, 1976; however, when awarding his permanent disability benefits, on the available earnings information twelve months preceding his accident, it was recommended that the minimum rate be applied. The worker's occupation as a labourer was of a seasonal nature and as such, his employment was not on a continuous basis throughout any particular year. Because of the disparity in earnings between temporary disability benefits (maximum rate) and permanent disability benefits (minimum rate) for compensation purposes, a request was also made that the Pensions Medical Branch review these earnings to assure that full consideration for this man's type of seasonal employment be taken into account when his permanent disability earnings basis was calculated.

This Office was advised by the Pensions Branch of the Board that the worker's earnings basis had now been reviewed and upwardly adjusted. This increase raised his monthly pension award from \$85.75 to \$147.50 and with respect to the adjustment, effective March 22, 1978, he was awarded \$3,916.61 in arrears. This Office was also advised that the three disability back claims would be reviewed subsequent to a further disability assessment of his condition.

In a report to the complainant and the Workmen's Compensation Board the Ombudsman stated that although he found the complaint to be unsupported he was pleased that a review of his disability claim had effectively increased the dollar value of his monthly permanent disability award.

DETAILED SUMMARY NO. 22

The complainant contacted the Queen's Park Office of the Ombudsman and indicated he was not satisfied with a decision of the Workmen's Compensation Board's Appeal Board.

The Board was advised of the Ombudsman's intention to investigate the complaint. It was the complainant's position that the decision to limit his permanent disability award to 10% for an organic back disability was unreasonable and that the decision not to award a supplement pursuant to section 42(5) for the period May, 1976 to October, 1977, was also unreasonable.

Our investigation revealed that in May, 1975, the worker slipped and fell while moving an extension ladder. The initial diagnosis from a general

surgeon was of a contusion strain to the lumbosacral spine. The claim was recognized by the Workmen's Compensation Board and the complainant received temporary total benefits until January, 1976.

As a result of an Appeal Board decision dated July, 1977, the complainant also received temporary total benefits until May, 1976, and a 10% permanent disability award subsequent to May.

Concerning the first contention the Ombudsman noted the results of medical assessments with respect to the worker's back indicated that his disability was of a minimal nature aggravated by his overreaction to pain, his pre-existing degenerative disc disease and his weight. The Ombudsman was compelled by these facts to find this portion of the complaint to be unsupported.

Concerning the second contention, the Ombudsman reached the following possible conclusion and recommendation:

Possible Conclusion

It would appear that it might be open...to conclude, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Appeal Board acted unreasonably in its decision of July 22, 1977, in not granting the complainant a temporary supplement to his Permanent Partial Disability Award under section 42(5) because he had been carrying out his own rehabilitation program.

Possible Recommendation

It may be open...to recommend, pursuant to section 22(3)(c) of The Ombudsman Act, 1975, that the Appeal Board vary, in part, its decision dated July 22, 1977, and grant the complainant entitlement to a temporary supplement award for the period of May 16, 1976, to October 11, 1977, under the provisions of section 42(5) of The Workmen's Compensation Act.

The Board's response indicated that the Appeal Board had reconsidered its decision and accepted the Ombudsman's possible recommendation. The response in part read:

The Appeal Board has carefully considered the information in the worker's file in light of the Ombudsman's possible conclusions and recommendation. The Appeal Board has had particular regard for the fact that during the period May sixteenth, 1976 to October eleventh, 1977, the services of the Vocational Rehabilitation Branch were not extended to the worker since at that time he was not considered to have incurred any permanent disability.

In reviewing the available information the Appeal Board is satisfied that the worker was to some extent available for suitable employment during the period May sixteenth, 1976, to October eleventh, 1977, and that in fact he worked for several different employers during this time. The Appeal Board, therefore, concludes that he has entitlement for supplementary benefits subject to the provisions of section 42(5) for some parts of the period May sixteenth, 1976 to October eleventh, 1977.

After being advised that the appropriate payments had been sent, the Ombudsman considered the complaint to have been satisfactorily resolved and the file was then closed.

DETAILED SUMMARY NO. 23

The Appeal Board of the Workmen's Compensation Board denied the complainant entitlement to benefits for a disability arising out of her employment in October, 1976, and entitlement for a recurrence of a back disability which she attributed to her work in November, 1974. The complainant then requested an investigation by our Office into the decision of the Appeal Board.

Our investigation revealed that the complainant suffered a back disability in 1974 while lifting a desk during her employment as a school cleaner. X-rays were taken and she received conservative treatment for muscle spasm from her family doctor. The complainant returned to work approximately 10 days after the accident. The claim was accepted by the Workmen's Compensation Board.

The next incident of back pain occurred in October, 1976, after she was involved in a dispute with a female co-worker. This dispute involved pushing and shoving on the part of both women and ended in the complainant being held in a headlock. As a result of this dispute, the complainant suffered a sore back, neck and arms and was off work for approximately two days. The complainant continued to seek medical treatment for low back and neck pain from her family doctor and an orthopaedic specialist.

A review of all the information on file including statements of witnesses indicated that the complainant had not been a victim of an attack by her co-worker and that the dispute had been a personal argument over the use of a tea cup. In respect to this incident the Ombudsman found that the altercation which occurred during the course of the complainant's employment was a dispute over a personal matter and did not arise out of the employment. The Ombudsman, in reaching a conclusion noted that for an incident to be compensable it had to be shown that the disability not only occurred in the course of the employment but also arose out of the employment. Since the latter condition had not been met, the Ombudsman found that the Board's decision to deny entitlement for that episode was not unreasonable.

In respect to a relationship between the 1974 accident and the recurrence of neck and low back pain, the Ombudsman reviewed carefully

all of the medical information on file. The Investigator also contacted the complainant's orthopaedic specialist in order to obtain his opinion on the cause of the back pain which disabled her from November, 1976, to February, 1977. The specialist stated that in his opinion, the nature of the injury in 1974 was not significant enough to cause the disability which occurred in 1976 and that the dispute in which she was involved would appear to have aggravated an underlying condition. The Board's Surgical Consultant also noted that he could not relate the disability in 1976 to the 1974 compensable accident. Given this medical information, the Ombudsman was unable to find the Board's decision to deny entitlement for ongoing problems as a result of the 1974 accident, as unreasonable.

The complainant and the Workmen's Compensation Board were notified of the Ombudsman's findings and the file was subsequently closed.

RECOMMENDATIONS

DENIED

THE WORKMEN'S COMPENSATION BOARD

DETAILED SUMMARY NO. 24

During a personal interview, this dentist registered two complaints concerning a decision of the Appeal Board of the Workmen's Compensation Board. Specifically, he was dissatisfied with the 10% permanent disability award granted and the decision to deny him additional benefits under section 42(5) of The Workmen's Compensation Act.

As it was apparent that the Ombudsman had jurisdiction to investigate these complaints, the Chairman of the Workmen's Compensation Board was notified of the Ombudsman's intention to investigate.

The investigation revealed the following information. In 1922 the dentist graduated and set up practice which he maintained until March, 1976, when he was forced to close his office because of the radio-dermatitis on the dorsal aspects of both hands. The dermatitis was a result of the x-ray machines used between 1922 and the early 50's which were not properly shielded.

In 1965 the complainant applied for personal coverage from the Workmen's Compensation Board because he was no longer eligible for private income loss insurance plans. The complainant paid premiums until 1977 and had \$7,500.00 annual coverage from the Board.

In the initial stages of the adjudication of this claim, the Workmen's Compensation Board denied entitlement because in its opinion the dentist could have continued to work with gloves. The claim was then allowed and the worker was granted the 10% permanent disability award. With respect to the permanent disability award the Ombudsman found that the 10% rating adequately and fairly represented the complainant's residual disability.

However, with respect to the benefits pursuant to section 42(5), the Ombudsman came to a possible conclusion and recommendation which might have adversely affected the Board. Accordingly, pursuant to section 19(3) of The Ombudsman Act, 1975, he afforded the Board the opportunity to make representations with respect to the following:

Possible Conclusion

It would appear that it might be open to me to conclude pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Board's decision that (the complainant's) impairment to earning capacity was not significantly greater than usual and therefore the decision not to grant (the complainant) a special supplement under section 42(5) was unreasonable based on the following findings.

(The complainant) was in his late 70's. It would appear that a younger doctor, afflicted with the same disability, would have more opportunities to secure employment as a teacher or consultant. It, therefore,

appears that (the complainant's) impairment to earning capacity was greater than normal simply because of his age.

(The complainant), who practiced dentistry for 50 years had a substantial commitment to his profession. Therefore, his occupational possibilities were very limited. It would appear unreasonable to suggest that he consider another occupation.

It would appear that the Appeal Board on September 1, 1978, attached importance to the fact that (the complainant) did not renew his licence to practice dentistry in 1978. There is little merit to suggest that (the complainant) should have renewed his licence as he did not have a job and, therefore a need for the licence. This was an unnecessary expense. (The complainant) was assured by the Royal College of Dental Surgeons of Ontario that he would be able to renew his licence if he was finally able to secure employment. The Appeal Board asked whether there was an age requirement for practicing dentistry. It satisfied itself with the answer that (the complainant) had not renewed his licence. The question of this licence, it would appear, was an unreasonable consideration.

Possible Recommendation

It would appear that it might be open to me to recommend pursuant to section 22(3)(c) of The Ombudsman Act, 1975, that the Board vary its decision of January 15, 1979, and grant (the complainant) entitlement to a temporary supplement.

In response to the Ombudsman's possible conclusion and Recommendation, the Board responded in part as follows:

However, in the opinion of the Board, (the complainant) does not meet the requirements of section 42(5) that would warrant a supplement for the following reasons:

Section 42(5) requires that the employee either cooperate and be available for a medical or Vocational Rehabilitation program which would in the opinion of the Board aid in returning him to work or that the employee be available for employment which is available and which in the opinion of the Board is suitable for his capabilities.

The information available clearly demonstrates that in the opinion of the Board there is no reasonable

medical or Vocational Rehabilitation program available that will aid in returning (the complainant) to employment nor in the opinion of the Board does the information provided by (the complainant) and the information obtained by the Vocational Rehabilitation Branch indicate that there is any employment available which is suitable for (the complainant's) capabilities.

Upon receipt of this response, the Ombudsman carefully considered the information and noted that the complainant had both cooperated and been available for any kind of program or work that the Board would have offered him. The Ombudsman also noted, however, that the Board was not able nor did it attempt to assist the complainant either through appropriate vocational retraining or job placement. In the Ombudsman's opinion, it was precisely because the Board could not offer the complainant any other assistance that he was entitled to benefits under section 42(5) in accordance with its own policy. Because there were no employment possibilities apparent, it must have been concluded that the complainant's impairment of earning capacity was significantly greater than usual for the nature and degree of his injury.

In a report the Ombudsman concluded pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Appeal Board decision of January 15, 1979, unreasonably denied the complainant entitlement to a supplementary award under the provisions of section 42(5) of The Workmen's Compensation Act. He recommended pursuant to section 22(3)(c) of The Ombudsman Act, 1975, that the Workmen's Compensation Board vary its decision and award the complainant a temporary supplement.

The Board advised the Ombudsman that it did not intend to implement his recommendation. The substance of the Board's response read as follows:

The Board, then accepts that the impairment of earning capacity is greater than usual in this case. The Board also accepts that (the complainant) has determined a willingness to cooperate in a vocational rehabilitation program to place him back into the work force. Implicit in this, is his availability for employment. The problem arises, however, (as was pointed out in Mr. Starr's letter of March 3, 1980) in that the requirement of the statute that he be available for work "which is available" has not been met. Through the efforts of (the complainant) in cooperation with the Vocational Rehabilitation Branch, the Board is satisfied that there is no work available for (the complainant) which is "suitable for his capabilities". The Board cannot accept that the legislation intended to provide supplementary benefits in cases where there is absolutely no indication that suitable work will become available. Such benefits, in the opinion of the Board, were intended to assist an injured employee temporarily, during a

period of financial hardship while the injured employee was actively engaged in looking for work which was available, but which the injured employee had not yet been able to secure.

After reviewing the Board's response, the Ombudsman concluded that it was not adequate or appropriate in respect to his recommendation. In his opinion there was work available to senior citizens in the general labour market. In the Ombudsman's opinion there was no evidence to indicate that there was no work available to the complainant.

Accordingly, the Ombudsman referred this matter to the Premier pursuant to the provisions of section 22(4) and 22(5) of The Ombudsman Act, 1975. The results of his findings and the response of the Workmen's Compensation Board were reported to the complainant. The Board was also advised of the Ombudsman's decision to refer the matter to the Premier. The file was then closed.

DETAILED SUMMARY NO. 25

A number of complaints against the Workmen's Compensation Board concerning the level of permanent disability awards granted under section 42(1) of The Workmen's Compensation Act have been registered with the Office since its inception through personal interviews and by letters of complaint written by the complainant or his M.P.P.

In each case, the level of the permanent disability award had been the subject of an appeal to an Appeal Board panel. Accordingly, the Workmen's Compensation Board had been notified in writing at various times of the Ombudsman's intention to investigate.

Section 42(1) of The Workmen's Compensation Act reads as follows:

Where permanent disability results from the injury, the impairment of earning capacity of the employee shall be estimated from the nature and degree of the injury, and the compensation shall be a weekly or other periodical payment during the lifetime of the employee, or such other period as the Board may fix, of a sum proportionate to such impairment not exceeding in any case the like proportion of 75 per cent of his average weekly earnings during the twelve months immediately preceding the accident or such lesser period as he has been employed.

The Board has historically held that this section provides for the making of an award only on the basis of a clinical assessment made by a duly qualified medical practitioner.

During the investigation of complaint #30, reported in the Seventh Report to the Legislature, the Ombudsman came to the conclusion that the crucial issue to be addressed by the Board under section 42(1) was the impairment of the employee's earning capacity. In the Ombudsman's view the

Board, in determining the impairment, is not limited to a consideration of the clinical rating, but shall also consider any and all other relevant information when assessing a workers' impairment of earning capacity. In complaint #30 the Ombudsman recommended that the Board revoke its decision and grant the complainant an increase to his permanent disability award.

The Board declined to accept this interpretation and recommendation. The matter was then referred to the Premier, pursuant to section 22(4) of The Ombudsman Act, 1975, included in the Seventh Report to the Assembly and then reviewed by the Select Committee on the Ombudsman during its sittings in the summer of 1980.

In its Eighth Report dated December 9, 1980, the Committee stated as follows at page 53:

The interpretation placed on all of section 42 of The Workmen's Compensation Act by the Workmen's Compensation Board makes no provision for a workman in Ontario to receive a disability payment for an impairment of earning capacity greater than otherwise might be expected, on an indefinite basis where that workman, because of the injuries and the disability and degree of impairment is effectively removed from the work force. In the Committee's opinion this anomaly only exists because of the Board's interpretation of section 42(1), that is, impairment of earning capacity is dictated by clinical assessment of the nature and degree of the injury.

At page 55, the Committee concluded that:

The Committee supports the recommendation of the Ombudsman particularly as it relates to his interpretation of section 42(1) of The Workmen's Compensation Act. The Workmen's Compensation Board has historically interpreted this section as permitting the payment of benefits to workmen in amounts which are proportionately higher than the actual impairment of earning capacity. It must follow that that interpretation to be truly equitable must also permit the payment of benefits which actually reflects the impairment of one's earning capacity.

In light of the Committee's support of the Ombudsman's interpretation and recommendation, a review of all files in this Office pertaining to the Workmen's Compensation Board was conducted. Of these, there were 135 files under investigation which specifically raised the issue of the Board's assessment of permanent disability awards. The investigation into these complaints revealed that the permanent disability awards were assessed by the Board on the basis that it had no discretion to make any award pursuant to section 42(1) beyond a clinical assessment made by a duly qualified practitioner. The Ombudsman decided that, inasmuch as the crucial issue in all of these complaints was the same, the most appropriate approach was to

deal with them collectively. The complaints were separated into two Appendices, each identifying the complainant's name, file number and claim number. Appendix A listed all complaints which dealt solely with the awards granted under section 42(1) of The Workmen's Compensation Act. Appendix B listed all those cases where the complainant registered multiple contentions only one of which concerned the assessment of the permanent disability award.

The Ombudsman notified Mr. T. D. Warrington, Vice-Chairman of Appeals of the Workmen's Compensation Board, pursuant to section 19(3) of The Ombudsman Act, 1975, of his possible conclusion and recommendations, with respect to these cases, and invited the Board to make representations. The Ombudsman advised Mr. Warrington that he was of the tentative opinion that the decisions regarding the cases referred to in Appendices A and B were unreasonable, as the Board had limited its inquiry to a clinical assessment and had failed to give consideration to all relevant factors when assessing permanent disability awards for the complainants in question. The Ombudsman also informed Mr. Warrington of the tentative recommendation that all of the cases referred to, should be reconsidered by the Board, to determine the impairment of earning capacity of the injured workers.

Mr. Warrington advised the Ombudsman that the Board was not in a position at that time to comment on the tentative conclusion and recommendations, and was content with him making a final decision without further representations.

After carefully considering all of the relevant information, the Ombudsman formed the opinion pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the decisions by the various Appeal Board Panels in the cases referred to in Appendices A and B were unreasonable in that all information necessary to assess the complainants' impairment of earning capacity, as a result of their compensable injuries, was not considered in view of the Board's interpretation of section 42(1). Accordingly, he recommended that pursuant to section 22(3)(g) of The Ombudsman Act, 1975, the Appeal Board reconsider all the cases referred to in Appendices A and B and obtain all information necessary to assess the workers' impairment of earning capacity. He also recommended pursuant to section 22(3)(d) that the Board alter its practice to take into consideration, factors indicative of the actual impairment of earning capacity, when assessing a workers' permanent disability award.

The report made under section 22(3) of The Ombudsman Act, 1975, was forwarded to the Minister of Labour and to the Chairman of the Workmen's Compensation Board requesting that any response be forwarded to the Office within ten days. However, the Chairman of the Workmen's Compensation Board indicated that a period in excess of ten days was required to adequately respond to the Ombudsman's conclusion and recommendations. The Chairman was then advised that notification under section 22(4) and 22(5) of The Ombudsman Act, 1975, would occur at a later date. As of this later date however, the Office had not received any further indication that the recommendations would be implemented and, accordingly, pursuant to section 22(4) and 22(5) of The Ombudsman Act, 1975, a copy of the report and recommendations was forwarded to the individual complainants, their M.P.P.'s where indicated, and to the Premier. The Premier's response did not indicate that any steps would be taken to implement the recommendations.

MANAGEMENT BOARD OF

CABINET

CIVIL SERVICE COMMISSION

DETAILED SUMMARY NO. 26

The complainant wrote the Office of the Ombudsman, complaining against the Civil Service Commission and the Ministry of Government Services.

The complainant was employed as a student counsellor on the casual staff of a Regional Centre from December, 1971 to September, 1972. In September of 1972, he joined the Centre's probationary staff. The complainant was hired under an individual contract of employment between himself and the Ministry of Health, under whose auspices the Regional Centre fell at the time. The contract was governed by The Public Service Act and the regulations passed thereunder. One of the regulations stipulated that,

There shall be deducted from the regular fortnightly pay of every person appointed to the civil service on and after the day this section comes into force, the sum of \$2.00 in lieu of the membership dues of the Civil Service Association of Ontario.

Another regulation stated,

. . . the deductions referred to in this section shall be remitted to the Civil Service Association of Ontario . . .

Consequently, when the complainant transferred from casual to probationary staff, the Centre's payroll department began to make the \$2.00 deduction from his paycheque. The deduction was identified on the cheque stub as "C.S.A.O. dues". The complainant contended that he had wanted to be an Association member, so he made no objection to the deduction. He maintained that no one from either the Ministry or the C.S.A.O. told him such deductions did not automatically make him a member. In fact, he maintained that no one representing the Association ever approached him at all.

In June of 1973, the complainant lost his left leg in a motorcycle accident unrelated to his work. He subsequently attempted to collect the \$2,500.00 provided for loss of limb under an accidental death and dismemberment insurance policy held by the C.S.A.O. for the benefit of its members. He was advised that because he had never applied for C.S.A.O. membership, he was not a member of the Association but a "dues-paying non-member", and accordingly he was not entitled to benefit under its insurance policy. The complainant asked the Ombudsman to investigate.

The former Ombudsman wrote to the Chairman of the Civil Service Commission, and to the Deputy Minister of Government Services and advised them of his intention to investigate the complaint.

During the course of the investigation, the former Ombudsman came to two possible conclusions:

1. that the Ministry of Government Services and/or the Civil Service Commission was/were wrong in that they failed to give the complainant notice of the benefits available to him as a member of the Civil Service Association of Ontario upon commencing his employment; and
2. that the Ministry of Government Services and/or the Civil Service Commission was/were wrong in not providing the former Civil Service Association of Ontario with a list of new government employees so that it would be in a position to contact the complainant and advise him of Union benefits available to him.

The Ombudsman so advised the Civil Service Commission and Ministry of Government Services pursuant to section 19(3) of The Ombudsman Act, 1975.

Because in his view, the Ontario Public Service Employees Union (formerly the C.S.A.O.) might be adversely affected by his possible conclusions, the former Ombudsman also accorded it an opportunity to make representations thereon pursuant to section 19(3) of The Ombudsman Act, 1975.

It was the position of the Minister of Government Services that because his Ministry had neither employed the complainant nor administered the insurance plan under which he was denied benefits, it had no jurisdiction over this matter. The Minister therefore declined to comment on the merits of the complaint, stating that the Civil Service Commission would be providing a more substantive answer.

The Commission stated that there was no obligation on it to advise employees of the existence of union fringe benefit programs designed to encourage union membership. The Commission also stated that any attempt to do so might be considered an improper intrusion into union affairs. It also explained that the amount and kinds of personnel information which an employer provided a bargaining agent was largely the product of collective bargaining, a process which ought not to be interfered with.

The O.P.S.E.U. contended that its predecessor union had done everything within its power to reach people like the complainant and to emphasize that the payment of union dues did not constitute union membership. It pointed to numerous notices it had published in its newspapers and posted on the bulletin board designated for union affairs at the employer's place of business.

In light of the investigation conducted, the Ombudsman came to the conclusion that neither the Ministry of Government Services nor the Civil Service Commission was obliged to outline the benefits available to the complainant if he were to become a union member. Nor, in his opinion, did they act unreasonably in not doing so, as that task belonged more appropriately to the C.S.A.O. Furthermore, upon consideration of the matter, the Ombudsman agreed with the Civil Service Commission that the Crown, like

any other employer, ought to be allowed to determine its position on the disclosure of personnel data at the bargaining table, and that this was a matter more properly left to the Civil Service Commission and the O.P.S.E.U. as part of the bargaining process. Consequently, the Ombudsman was unable to conclude that the Ministry of Government Services and/or the Civil Service Commission was/were "wrong". Nevertheless, the Ombudsman urged that the issue of the systematic exchange of information be the subject of intensive negotiation in the future, since it was the Ombudsman's understanding that the Geographic Location Code currently furnished to the Union is not sufficiently detailed to preclude the recurrence of another predicament such as the complainant's, particularly within the Toronto area.

During the course of the Office's investigation of the allegations made against the Ministry of Government Services and the Civil Service Commission, the argument was advanced, however, that given the C.S.A.O.'s difficulties in reaching new employees back in 1972, some onus lay with the Ministry of Health, as the complainant's employer, to at least explain his status to him. In particular, it was suggested that because an automatic check-off system might well confuse someone unversed in labour relations, the employer should have explained that the deduction in question represented an amount equivalent to Association dues, as opposed to Association dues per se, and therefore did not constitute evidence of C.S.A.O. membership.

Accordingly, a member of the Ombudsman's legal staff contacted the Senior Personnel Officer at the Regional Centre. The lawyer was advised that in the early 1970's, a new employee asking for an explanation of the payroll deduction made pursuant to section 45 of R.R.O. 749 would have been told that it was "union dues", not "a sum in lieu of union dues". Only if he objected to union membership would he have been told that the deduction did not automatically make him a member of the C.S.A.O. This, in combination with the fact that the pay stub identified the deduction as "C.S.A.O. dues", could easily have misled the uninitiated to believe that he was in fact an Association member. Furthermore, because of the C.S.A.O.'s previously discussed difficulties in identifying new employees, and the prohibition against union discussion on the employer's premises which prevailed at the time, the Association was unable to dispel this misunderstanding.

On the basis of this information, the Ombudsman felt that it might be open to him to form the following possible conclusion:

- I. that the omission of the Regional Centre to clarify the complainant's position respecting the payroll deductions and C.S.A.O. membership with him was unreasonable in all the circumstances.

As the Ombudsman believed the Ministry of Health might be adversely affected thereby, he wrote to the Deputy Minister of Health in accordance with section 19(3) of The Ombudsman Act, 1975, and invited him to make representations respecting the Ombudsman's possible conclusion. In his response, the Deputy Minister denied his Ministry's responsibility in this matter. Appended to the letter was a policy directive issued in 1970, the relevant portion of which was as follows:

Would you please ensure that all employees in the bargaining unit fully understand that the requirement to pay the equivalent of union dues does not automatically confer membership in the Civil Service Association. An employee becomes a member of the Association only if, and when, he signs a membership card.

The Deputy Minister added that he had no reason to believe that these instructions were not being carried out.

As our investigation had revealed that there might be reason to suspect that the above instructions had not been applied to the complainant, we attempted to contact the Centre's Senior Personnel Officer during the period in question. Unfortunately, the personnel officer had left the public service, and our efforts to trace him proved unsuccessful. Consequently, it was impossible to resolve this point beyond all doubt. However, on weighing the evidence before him, the Ombudsman was satisfied that the complainant was not adequately informed of his status with respect to the C.S.A.O. and the significance of the bi-monthly deductions made under the regulations.

The Ombudsman accordingly determined, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the omission of the Regional Centre to clarify the complainant's position respecting his payroll deductions and C.S.A.O. membership with him was "unreasonable" in all the circumstances. In so determining, the Ombudsman recognized that some responsibility must be borne by the C.S.A.O. and the complainant himself.

The Ombudsman did not think, however, that this was an appropriate case in which to recommend an ex gratia payment to the complainant by the Ministry of Health because he did not consider that the failure of the complainant to receive the benefit provided by the C.S.A.O. insurance policy was directly attributable to the omission of the Regional officials to explain the complainant's status to him.

MINISTRY OF
REVENUE

DETAILED SUMMARY NO. 27

This complaint was received at our North Bay Regional Office.

The complainant had initially been denied the \$1,500.00 Ontario Home Buyers Grant because he was entitled to immediate vacant possession of his housing unit on March 3rd, 1975, which date was prior to the commencement date for the grant eligibility period. However, after a further review of the complainant's situation, the Ministry took the position that the condominium complex in question was registered by March 3rd, 1975. As a result, the complainant had to meet the eligibility requirements for a "registered" rather than a "proposed" condominium unit. Accordingly, his Transfer of Freehold Land had to be registered in the proper Land Registry Office between April 8 and December 31, 1975, i.e., the grant eligibility period. Since it was registered on March 1st, 1976, the Ministry determined that he was ineligible for the grant.

The complainant nevertheless believed that his condominium housing unit was a "proposed" one at the time of purchase and submission of his grant application. Furthermore, he claimed that he was not entitled to immediate vacant possession of his unit until May 1st, 1975. According to the complainant, although the date of March 3rd, 1975, was the original closing date of the transaction agreed to with the vendor, he could not raise sufficient funds by that date and he had lost his \$100.00 deposit on the unit. On April 9, 1975, the complainant was in funds, and since the condominium unit was still available, he provided his solicitor with a down payment. The complainant was apparently advised by his solicitor that he could not move into his housing unit until May 1st, 1975. This could not be verified as the complainant's solicitor is deceased.

In a preliminary review of this complaint, the investigator contacted the Land Registry Office in the Northern Ontario city in question, and learned that the complainant's condominium building was registered on November 5th, 1975. Because of the significance of this fact to the complainant's entitlement to the grant, the investigator passed this information on to the Ministry.

The Ombudsman then notified the Deputy Minister of Revenue of his intention to investigate this matter and soon thereafter received a statement of the Ministry's position.

The Ministry had again contacted the Land Registry Office and discovered that the actual date of registration of the complainant's condominium complex was indeed November 5th, 1975, and not November 4th, 1974, as it had originally believed. The Ministry therefore confirmed that at the time the complainant agreed to purchase the housing unit, it was a "proposed" unit and that entitlement to vacant possession on May 1st, 1975, vested the property in him on that date, within the eligibility period. The complainant was therefore entitled to the \$1,500.00 Ontario Home Buyers Grant.

The Ministry advised our Office that since this Program is no longer operating, no money had been voted for it by the Legislature in the current year. However, the Ministry would seek authorization for payment of the complainant's \$1,500.00 grant. Payment would be forwarded to the complainant as soon as it had been approved and the complainant was so advised.

DETAILED SUMMARY NO. 28

This complainant contacted the Office of the Ombudsman by letter with a complaint against the Ministry of Revenue.

A Regional Assessment Office had decided that the complainant's residence was completed and occupied on June 1st, 1977, while it was still under construction. The Regional Assessment Office sent a notice of Supplementary Assessment to the complainant's residence and sent a tax bill, pursuant to the Supplementary Assessment, to the Town to be processed and sent to the same address. Unfortunately, the complainant who had been constructing the residence since 1974, was residing at his principal residence in another town at the time of the assessment, where he was recovering from a heart attack. The residence under construction was not visited by the complainant during 1977, and his wife had visited it only occasionally for security checks. As a result, the complainant never received the notice of Supplementary Assessment nor the subsequent tax bill. He therefore missed his opportunity to appeal the Ministry of Revenue's Supplementary Assessment.

The complainant learned of the Supplementary Assessment and the tax bill, when a notice of arrears was sent to his principal residence on April 21st, 1978.

Before the complainant contacted our Office he had approached the Deputy Clerk of the Town who allowed him an opportunity to request that the Town Council cancel the tax bill although the time period for such an appeal, under The Municipal Act, had expired. The Town Council refused to cancel the Supplementary Assessment but did agree to withdraw all interest charges on the unpaid tax bill.

The complainant had also contacted the Regional Assessment Office and spoke with the property assessor who had assessed his unfinished residence. He was informed that the matter was entirely the responsibility of the Town as the time for appeal of the assessment under The Assessment Act had expired.

The Ombudsman advised the Deputy Minister of Revenue of his intention to investigate this matter and soon thereafter received a statement of the Ministry's position. In his response the Deputy Minister stated that the residence in question was inspected on three occasions prior to the assessment date and the property assessor observed that the lawn was sodded, the exterior was finished, curtains hung in the windows and lights were on inside. On these observations the assessor assumed that the house was used.

The Deputy Minister's response also stated that the notice of Supplementary Assessment was sent to the address in question and that the Ministry had no reason to believe it was not claimed. However, the Ministry had been informed that the Town forwarded the tax bill, prepared by the Ministry, to the complainant's principal residence, where he was actually residing. The Ministry could not accept that the complainant did not receive at least one of the items.

Our investigation revealed that the property assessor had not entered the residence to inspect it, but had passed by it in his car. The property assessor had not obtained the name of the owner of the residence to arrange for access to the house, as is the Ministry's normal practice.

Our Office also learned that the complainant had instructed the Regional Assessment Office to forward all correspondence regarding the address in question to his principal address. However, the Regional Assessment Office forwarded the notice of Supplementary Assessment directly to the complainant's other address.

The Town advised us that the tax bill, which had been prepared and addressed by the Regional Assessment Office, was also sent to the wrong address. The complainant had also instructed the Town to forward all correspondence related to the residence under construction to his principal address but the Town failed to notice that the Ministry had placed the wrong address on the bill. Therefore, neither the notice of Supplementary Assessment nor the tax bill was sent to the complainant at his principal residence.

Our Office was advised by the complainant's wife that she had prepared the exterior of the new residence to appear as though it was occupied to discourage prowlers from entering it.

The property assessor informed our staff that he was not certain that the house was actually completed or occupied when he assessed it but processed the Supplementary Assessment believing that any mistake would be rectified through the appeal process.

Based on the foregoing facts, the Ombudsman then advised the Deputy Minister of his possible conclusions pursuant to The Ombudsman Act, 1975, that the Supplementary Assessment of the residence was "wrong"; that the property assessor was "unreasonable" not to have entered the premises or contacted the owner; and that the Ministry had acted "contrary to law" by not sending the notice of Supplementary Assessment to the complainant's principal residence. The Ombudsman also explained in his letter that because the complainant had given instructions to the Regional Assessment Office regarding the forwarding of correspondence, which the Ministry did not respect, the taxation roll certifying the Supplementary Assessment may be invalid, pursuant to section 53 of The Assessment Act.

The Ombudsman stated that in view of the above he might possibly recommend pursuant to The Ombudsman Act, 1975, that the Ministry of Revenue pay to the complainant \$312.06, representing the amount of tax paid pursuant to the Supplementary Assessment.

As the Ombudsman was of the opinion that the Ministry and the property assessor might be "adversely affected" by his possible conclusion and recommendation, he accorded both the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of The Ombudsman Act, 1975.

Soon thereafter, the Deputy Minister advised the Ombudsman that the information obtained during the course of our investigation persuaded the Ministry to alter its position, and the Town had indicated its willingness to refund the overpayment of tax related to this Supplementary Assessment in the amount of \$312.06.

Subsequently the Ombudsman advised the complainant and the Ministry of Revenue that the file on this matter was being closed as the complainant's problem had been resolved.

MINISTRY OF
TRANSPORTATION AND COMMUNICATIONS

DETAILED SUMMARY NO. 29

In these cases which number approximately 20, the complainants operated buses, ambulances and large trucks. Their classified drivers' licences were revoked by the Ministry of Transportation and Communications, pursuant to Regulation 906/76 under The Highway Traffic Act. That Regulation states that no applicant can be issued a classified driver's licence if he or she suffers from any medical condition listed in the Regulation. The more common medical conditions of our complainants were heart conditions and diabetes. As a result of the Ministry's actions, the complainants were unable to pursue their livelihoods.

The Regulation sets out an absolute standard, providing no discretion to the Ministry with respect to its implementation and no appeal process for an individual whose classified licence has been downgraded or revoked.

In each case we obtained the complainants' medical records to determine if the actions taken by the Ministry were in compliance with the Regulation. Our Office was satisfied that in each case the Ministry did administer the Regulation properly and committed no error of fact or law.

Following our conclusion that the Ministry did act in accordance with the Regulation our investigation focused on the reasonableness of the omission from the Regulation of a process whereby a medically stable applicant could be reissued his or her driver's licence.

The Ministry's position on this matter was that it relied on the advice of the Canadian Medical Association in the drafting of the Regulation. As the Association recommended absolute standards without any appeal process the Ministry was not prepared to allow complainants with medical conditions or histories of such conditions now to receive classified licences. The Ministry advised our Office that its officials themselves lacked the requisite medical knowledge to make policies in this area; the Ministry was only prepared to amend the Regulation on the advice of the Canadian Medical Association.

Our investigator reviewed the Canadian Medical Association's Guide to Physicians In Determining Fitness To Operate A Motor Vehicle and also interviewed members of the Association's Emergency Medical Committee who prepared the Guide. Unfortunately, the Association was unable to provide us with any statistical evidence supporting its conclusions and recommendations put forward to the Ministry of Transportation and Communications. The information sought by our Office had been considered by the Association but was never compiled into one comprehensive report.

We then attempted to obtain evidence on whether drivers with the listed medical conditions were a greater risk than ordinary drivers. Neither the Canadian Heart Foundation, the Canadian Diabetic Association, the Teamsters' Union, a well-known heart attack Rehabilitation Centre in Texas, or individual trucking companies were able to provide our Office with any empirical evidence supporting or challenging the Ministry of Transportation and Communication's Regulation. However, each organization did offer the opinion that the Regulation should provide an appeal process for applicants denied the classified licence.

In our comparison of Regulation 906/76 to relevant legislation in the other Canadian provinces, the State of New York and to the Federal Department of Transportation, Air Regulations, it was discovered that not all jurisdictions followed the strict recommendations of the Canadian Medical Association as the Ministry of Transportation and Communications had thought.

The following jurisdictions apply an absolute standard of minimum health requirements without an appeal for classified licence holders, as is the case in Ontario:

Prince Edward Island
Manitoba
British Columbia
Newfoundland.

The following jurisdictions consider the medical merits of the individual applicant and provide an appeal for all classified licence denials:

Quebec
New Brunswick
Saskatchewan
Alberta
New York.

The Federal Department of Transportation, Air Regulations, provides that applicants for a commercial pilot's licence, air traffic controller's licence, navigator's and engineer's licence will be denied where the applicant has a medical history of the conditions listed in Regulation 906/76. Decisions of the Medical Advisory Panel of the Department of Health and Welfare, the body which considers the medical conditions of air travel licences, cannot be appealed. Applicants for a private pilot's licence may appeal the decision of the Medical Advisory Panel an unlimited number of times. Therefore, a person who at one time suffered from one of the listed medical conditions may possibly be issued a private pilot's licence.

Three major insurance companies advised our Office that their actuarial studies did not show that the listed medical conditions, except poor vision, increased the risk of an accident while driving. Drivers are not charged higher premiums for insurance coverage unless it can be proven that a specific medical condition caused an accident resulting in injury.

Our Office received information on this issue from the Traffic Injury Research Foundation, an independent research group funded by government and business. In a report of a study by the Foundation entitled Medical Conditions and Risk of Collision: A Feasibility Study two significant points were made which influenced our decision in these cases.

Firstly, the Canadian Medical Association's preamble to its Guide emphasizes that its recommendations are to be considered as guidelines only and are intended to impose only common sense restrictions on drivers with medical defects.

Secondly, the Foundation's report points out that professional drivers are often unable to control their driving habits or the conditions under which they are forced to work. As a result, a professional driver is unable to control his exposure to risk of potentially hazardous situations. For this reason, stringent conditions of reinstatement should be applied to professional drivers.

In his report on each case the Ombudsman recognized the Ministry's responsibility to ensure maximum road safety for the community. However, the Ombudsman commented that the lack of any evidence to support the belief that drivers with classified licences who suffer from the listed medical conditions present a greater risk while operating a motor vehicle, was a concern to him. It may be that a perfectly trustworthy driver is prevented from pursuing his livelihood. In each case, the Ombudsman was unable to conclude that the Ministry's decisions or actions were unreasonable, given that there was no provision for individual consideration or appeal. However, the Ombudsman strongly suggested that the Ministry re-examine the Regulation with a view to giving individual consideration, through an appeal procedure, to classified licence holders.

The Ministry assured our Office that such an examination would be undertaken.

Some months later, the Minister of Transportation and Communications, informed the Provincial Legislature of his intention to introduce amendments to both The Highway Traffic Act and the Regulation made pursuant to that Act. In essence, the proposed amendments would allow the Ministry the right to waive all medical standards except vision, for those who hold or have held a valid class A, B, C or D driver's licence. The applicant must satisfy the Ministry of his or her medical stability. Furthermore, the Licence Suspension Appeal Board will hear appeals arising out of licence downgrading decisions by the Ministry.

DETAILED SUMMARY NO. 30

This complainant alleged that the Ministry of Transportation and Communications behaved unreasonably in removing his private access to a highway.

The complainant further contended that he was not advised that a permit authorizing him to construct the commercial entrance to the highway was conditional on him removing his original driveway.

The Ombudsman notified the Ministry of his intention to investigate this complaint.

Our investigation included contacts with the complainant for additional information as well as interviews with various Ministry officials.

In response to our notice of intention to investigate this matter, the Ministry replied that the complainant and his wife had, in May, 1977, requested permission to change the use of an existing entrance from residential to commercial to accommodate their proposal to start a

commercial feed business on their property. In assessing the request, it was found that due to the crest of a hill located to the west of their property, only 400 feet of visibility was available to the existing entrance. Since this was substantially less than the 600 foot minimum required for commercial entrances, the request was denied. However, the District Engineer, in reviewing the situation with the complainants, found that if they relocated the entrance 200 feet further east, the necessary visibility requirements could be met. The complainant agreed to relocate the entrance and on this basis, an entrance permit was issued on May 17, 1977, with the condition noted on the permit - i.e., "access to a commercial feed business (reclassification and relocation of present entrance)".

Repeated efforts on the part of the Ministry to convince the complainant to relocate the old entrance were not successful. Therefore, a registered letter was sent on November 23, 1977, to provide formal written notification to him that the relocation of his entrance had not been carried out in accordance with the conditions of the permit issued. A further registered letter was mailed to the complainant on April 25, 1979, to advise that the Ministry would remove the entrance the next time equipment was scheduled to work in the area. The entrance was removed in July, 1979, and when vehicles continued to drive through the ditch, posts were erected to prevent this unsafe practice.

During the course of our investigation, it became apparent that there was in fact more than the 600 feet of visibility required from the original entrance westward on the highway. The cooperation of the Ministry was elicited in order to have the exact distance of visibility determined, by way of measurement with surveying equipment.

On November 17, 1980, Ministry staff members measured the distance of visibility at both four and a half feet above ground level and at four feet above ground level. It was determined that at four and a half feet above ground level, the distance of visibility was 703 feet. At four feet above ground level, the distance of visibility was 680 feet. The Ministry officials recognized the fact that the original refusal of a commercial entrance was made in error, and subsequently apologized to the complainant and rebuilt the original entranceway to conform with the Ministry's standards for a commercial entrance.

As the complaint was resolved to the satisfaction of the complainant, the Ombudsman terminated the investigation.

DETAILED SUMMARY NO. 31

This complaint against the Ministry of Transportation and Communications was made by a resident of Northern Ontario who owns a three-quarter ton pick-up truck on which he occasionally carries a slide-in camper.

Regulation 418 under The Highway Traffic Act provides that small commercial vehicles owned by residents of Northern Ontario may be licensed at the passenger rate of \$10.00 if their gross weight is 2,400 kilograms or less and if they are used primarily for personal transportation.

The Regulation also requires a fee of \$10.00 for a motorized mobile home. In the complainant's case, once the weight of the slide-in camper was added to the weight of the truck, the gross weight of the vehicle exceeded 2,400 kilograms and he was then obliged to licence the truck at a much higher rate according to the fee table for commercial vehicles. The complainant felt that this was inconsistent, as his vehicle was used for personal rather than commercial transportation and served a purpose identical to that of a passenger car and a motorized mobile home.

The Ombudsman notified the Ministry of his intention to investigate this complaint and requested a statement of the Ministry's position. The Ministry replied that notwithstanding certain exceptions, it was a policy of the province's vehicle licensing system to register vehicles according to their construction and design. The Ministry also pointed out that the passenger fee was applicable to commercial vehicles of 2,400 kilograms or less in Northern Ontario because small trucks and vans are commonly used as family vehicles in that part of the province in lieu of passenger cars. Further, the Ministry suggested that it would not be appropriate to allow a reduced fee for a type of luxury such as a truck with a camper attachment.

A review of the legislation was conducted and contact was made with Ministry officials who suggested that motorized mobile homes qualified for lower fees because they are used only part of the year and are designed and constructed to provide living accommodation rather than to carry a load. The Ombudsman found that if the complainant owned two vehicles, a passenger car and a motorized mobile home, he would pay considerably less than the fee required for the truck and the camper unit.

The Ombudsman noted that the criteria in the applicable legislation, which appeared to be gross weight and use, did not conform to the Ministry's stated policy of licensing according to construction and design. Furthermore, in the Ombudsman's opinion, a truck with a slide-in camper unit did not seem to be any more of a luxury than a motorized mobile home.

The Ombudsman informed the Ministry of his possible conclusion that the higher fee exacted for the complainant's vehicle was in accordance with a regulation that was "unreasonable" and "improperly discriminatory", as the complainant's vehicle served a function and was used in a manner identical to other vehicles which could be licensed at a much lower rate according to their gross weight or use or both.

The Ombudsman made the possible recommendation that the Ministry seek an amendment to Regulation 418 under The Highway Traffic Act so that the total fees paid by the complainant would not exceed the total fees required for a passenger vehicle and a motorized mobile home.

In response, the Ministry stated its agreement with the possible conclusion. In order to remedy the problem, the Ministry indicated that an amendment to Regulation 418 would be drafted for the Government's consideration. The amendment will provide that where a self-contained dwelling unit containing life support equipment completely occupies a load, its weight shall not be included in determining the registered gross weight of the vehicle. In this way, owners of pick-up style vehicles will be able to

license their vehicles within the 2,400 kilogram limit of the personal transportation provision of the Act, notwithstanding their occasional use of slide-in campers. Although the Ministry was unable to commit a date by which this amendment would be proclaimed, it stated that it will move as expeditiously as possible.

The results of the investigation were communicated to the complainant and both he and the Ministry were then informed that the file would be closed.

APPENDICES

APPENDIX A

RECOMMENDATIONS DENIED

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|--|---|---|---|
| 2 | 60 | That the Ministry pay the complainant the sum of \$1,318.00 for his losses and legal expenses. | | | |
| | | <u>MINISTRY OF GOVERNMENT SERVICES</u> | | | |
| | | | 3, Recommendation 34 | That The Audit Act and The Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of The Ombudsman Act have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Select Committee. | Recommended amendments have yet to be enacted. The Ministry is willing to comply with the Ombudsman's recommendation if the payment can be lawfully made. |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|--|---|---|
| 4 | 45 | <p><u>MINISTRY OF HEALTH</u></p> <p>That the Ministry consider what changes should be made to <u>The Public Hospitals Act, Sec. 47</u> in order to give effect to the principle of a more widely distributed membership on the Hospital Appeal Board. That the Ministry enquire into the provisions of <u>The Public Hospitals Act</u> with a view to preventing acts flowing from Sections 44 to 50 of that Act which may be improperly discriminatory. It was further suggested that this inquiry be assigned to an organization such as the Ontario Council of Health.</p> | <p>5, Recommendation 27</p> <p>6, Recommendation 1</p> | <p>That the Ministry implement as soon as possible the recommendation of the Ombudsman.</p> <p>That the Ministry consider what changes should be made to <u>The Public Hospitals Act</u> and in <u>Sec. 47</u> in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board. Further, the Ministry cause an inquiry to be made into the provisions of <u>The Public Hospitals Act</u> to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory.</p> | <p>The Minister instituted enquiries of the Ontario Council of Health in an effort to gain necessary insights into the process in other jurisdictions. The Council's report has recently been received and is being considered by the Ministry.</p> |
| | | | 8 | <p>The Committee reminded the Minister of Health "that to the extent that the Council of Health identifies appropriate legislative change and so recommends to the Minister the Committee will view those legislative changes as necessary to fully comply with the recommendations in its Sixth Report".</p> | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION DENIED | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|--|--|--|
| 6 | 21 | | <p><u>MINISTRY OF HEALTH</u></p> <p>(2 complaints) that the regulations made pursuant to The Health Insurance Act be amended to provide that those subscribers who obtain the prior approval of the General Manager of the Plan have their medical fees, incurred for insured services performed outside the Province of Ontario, paid by the Plan to an extent substantially greater than would otherwise be paid for an analogous service listed in the O.M.A. fee schedule.</p> | <p>The Committee supported the substance of the Ombudsman's recommendation and recommended to the Legislature for approval and adoption that the Ministry of Health cause an amendment to be made to The Health Insurance Act providing that "where the amount payable by the Plan for an insured service rendered by a physician is not prescribed by the regulations, it is the function of the General Manager and he has the power to determine the amount".</p> | <p>As of Jan. 1, 1980, Code R990 was added to the OHIP Schedule of Benefits (Schedule 15 of Regulation 323/72). It specifies that: "Independent consideration also will be given to claims for other unusual but generally accepted surgical procedures which are not listed specifically in the Schedule (excluding non-major variations, of listed procedures)."</p> |
| | | 7 | | | |
| | | 8, | | <p>That the Ministry give prompt notice to all persons whose claims for benefits under R990 are in the future refused, full particulars of the appeal procedures available to them at the same time as the notice of refusal is communicated.</p> | |
| | | Recommendation 1 | | | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|--|---|--|---|
| 7 | 17 | <u>MINISTRY OF HOUSING</u> That the local Housing Authority give the complainant and his family immediate accommodation in a suitable geared-to-income housing unit; and if a suitable unit is not available immediately, that the Housing Authority accommodate the family in the first such unit which becomes available. | 8, Recommendation 2 | That the Legislative Assembly adopt and approve the recommendation of the Ombudsman that the Housing Authority in question give the complainant and his family immediate accommodation in a suitable geared-to-income housing unit; and if a suitable unit is not available immediately, that the Housing Authority accommodate the family in the first such unit which becomes available. | Due to illness of some Housing Authority members, no meeting has yet been held to discuss the matter although all members have been provided with a copy of the Select Committee's Report. Chapter 7 of the Manual has been revised and is in use. During 1981 the Corporation intends to completely rewrite the Manual. |
| | | | 8, Recommendation 3 | That the Ontario Housing Corporation immediately conduct a review and study of its manuals and the decision making functions of Housing Authorities in particular for the purpose of amending its manuals to give Housing Authorities more guidance in order that the Rules of Administrative Fairness will be more strictly adhered to. | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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MINISTRY OF LABOUR

Workmen's Compensation Board

| | | | | | |
|---|----|---|---|---|--|
| 6 | 38 | That the Appeal Board should reconsider its December 15, 1971 decision in the light of (this) report with a view to granting (the worker) entitlement to a Permanent Disability Award for his disability diagnosed as post-traumatic neurosis. Any award should be made retroactive to June 4, 1971 when (the worker's) temporary benefits were terminated. | 7 | <p>The W.C.B. reconsider, by hearing, its decision of December 15, 1971. In that hearing the Board should at least hear fresh evidence respecting the relationship between the complainant's symptoms and the compensable accident both from the Medical Referee appointed in 1971 and the psychiatrist retained by the Ombudsman during the course of his investigation.</p> <p>On October 24, 1979 the Board rendered a decision directing that the additional medical report, the detailed summary and recommendation of the Select Committee be referred to the Medical Referee for his further opinion and report. The Medical Referee was to examine the complainant if, in his opinion, such an examination was required.</p> <p>After receiving the Medical Referee's report, the Board reconsidered and determined that the policy of Benefit of Doubt was not appropriate in this case. The Appeal was denied.</p> <p>The Committee in its Eight Report noted its</p> | |
| | | | 8 | | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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| <u>MINISTRY OF LABOUR</u> | | | | | |
| <u>Workmen's Compensation Board</u> | | | | | |
| (cont'd) | | | | | |
| | | | | | "grave reservations that the Appeal Board Panel in this matter considered the application of the policy of the benefit of the doubt as intended by the Committee and articulated by the Corporate Board policy itself". After discussing these issues fully with the Board, the Committee intends to report to the Legislature with any appropriate recommendations. |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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| <u>MINISTRY OF LABOUR</u> | | | | | |
| <u>Workmen's Compensation Board</u> | | | | | |
| 7 | 30 | That the Appeal Board revoke its decision and grant the complainant an increase in his permanent disability award of 20%. | 8, Recommendation 6 | That the W.C.B. revoke its decision and grant the complainant an increase in his permanent partial disability award of 20% pursuant to Sec. 42 of The Workmen's Compensation Act. | The Board to date has not responded to nor implemented the Committee's recommendation. |

APPENDIX B

RECOMMENDATIONS UNDER
SECTION 22(3) (d) or (e)

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|--|---------------------|---|--------------------------------------|---|---|
| 2 | 47 | <p>MINISTRY OF EDUCATION</p> <p>That a more comprehensive insurance policy be made available to students, one which would provide compensation for injuries resulting in the loss of future earning power.</p> | May 4, 1977 | Deputy Minister took steps to meet with insurance industry representatives regarding more comprehensive insurance for students. | 3, Recommendation 23 | <p>That the Ministry forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type at a realistic premium which would adequately compensate a pupil for injuries sustained in the case of a pure accident as the result of participation in shop classes and in organized athletic activities.</p> | Ministry conducted a feasibility study. Not likely insurance scheme will be implemented unless it is made compulsory. Since this would require an amendment to The Education Act, 1974, Ministry now considering the policy issue of whether or not such insurance should be made compulsory. |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|------------------------------------|-------------------------|--|---------------------|---|--------------------------------------|--|--|
| MINISTRY OF GOVERNMENT SERVICES | | | | | | | |
| 2 | 57 | That The Public Service <u>Superannuation Act</u> be amended in order to eliminate all restrictions on the re-employment of provincial superannuates except where the nature of their re-employment is such that they resume contribution to the Public Service Superannuation Fund. | Aug. 31, 1976 | Executive Secretary of the Civil Service Commission agreed to recommend to Management Board of Cabinet changes in Public Service <u>Superannuation Act.</u> | 3, Recommendation 24 | That the Ministry table appropriate legislation in the Legislature during the current session removing the present restriction on the total current earnings of a provincial superannuate. | Necessary amendment has yet to be passed. An inter-Ministry task force has been appointed to study the report of the Royal Commission on the Status of Pensions in Ontario and to recommend appropriate amendments to the legislation. |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|-------------------------------------|--|---------------------------------------|---|
| MINISTRY OF HEALTH | | | | | | | |
| 3 | 40 | <p>That 1) all applicants for the right to construct a nursing home be informed well in advance of the due date for application, of the criteria upon which the Ministry intends to rely in making the award for a nursing home including the weight to be attached to each factor.</p> <p>2) every unsuccessful candidate be provided with written reasons as to why his proposal was rejected based on these criteria.</p> <p>3) The Nursing-Homes Act, 1972, be amended in order that provision be made for the successful candidate for the construction of a new</p> | May 4, 1977 | Agreed to implement recommendation. | 5, page 32. The Committee considered this complaint for the purpose of following up with the Ministry as to the implementation of the Ombudsman's recommendation as set out at pages 177 and 178 of the Ombudsman's 3rd Report. | | The Ministry has implemented a procedure of informing by letter persons being awarded new license as a result of competition. Letter will set out agreement as to schedule of events covering period of construction and pre-licensing inspection. Necessary amendments have yet to be enacted. |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|-----------------------|--|---------------------------------------|-------------------|
| | | <p><u>MINISTRY OF HEALTH</u> (cont'd)</p> <p>home to make appli- cation for a condi- tional license im- mediately upon the making of the award to him. This license should be conditional on compliance with the terms of the pro- posal and any subse- quent stipulations imposed by the Min- istry prior to the granting of an uncon- ditional license.</p> | | | <p>Committee has attached the said response to this report under Part IX as Schedule D. The Committee is of the opinion that the Ministry has and will con- tinue to fully comply with the recommendations of the Ombuds- man.</p> | | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|--|--|--|---|
| 4 | 45 | <p>MINISTRY OF HEALTH</p> <p>That the Ministry consider what changes should be made to The Public Hospitals Act, Section 47 in order to give effect to the principle of a more widely distributed membership on the Hospital Appeal Board. That the Ministry enquire into the provisions of The Public Hospitals Act with a view to preventing acts flowing from Sections 44 and 50 of that Act, which may be improperly discriminatory. It was further suggested that this enquiry be assigned to an organization such as the Ontario Council of Health.</p> | Jan. 1978 | <p>The Deputy Minister took the position that decisions of hospital boards and the Hospital Appeal Board in general do not fall within the jurisdiction of the Ombudsman and for that reason the Ministry could only accept the Ombudsman's comments and recommendations as informal observations and suggestions.</p> | <p>5, Recommendation 27</p> <p>6, Recommendation 1</p> | <p>That the Ministry of Health implement as soon as possible the recommendation of the Ombudsman.</p> <p>That the Ministry of Health consider what changes should be made to The Public Hospitals Act and section 47 in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board. Further, the Ministry of Health cause an inquiry to be made into the provisions of The Public Hospitals Act to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory.</p> | <p>The Minister's view is that until experience otherwise dictates the optimal way of ensuring an appropriate balance is through careful selection of the members of the Hospital Appeal Board.</p> <p>As to the issue of ensuring that the appropriate balance is represented, not only on the full Board, but also on a quorum of the Board, the Minister recognizes that in theory this can only be guaranteed by a statutory change. However, in view of the assurance given by the Chairman of</p> |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|---------------------------------------|-------------------|
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|---------------------------------------|-------------------|

MINISTRY OF
HEALTH
(cont'd)

8

The Committee reminded the Minister of Health "that to the extent that the Council of Health identifies appropriate legislative change and so recommends to the Minister, the Committee will view those legislative changes as necessary to fully comply with the recommendations in its Sixth Report".

the Hospital Appeal Board, previously reported to the Committee that a quorum will consist of the full Board, except where the parties otherwise agree or one of the members of the Board has a conflict of interest in a particular case, the Minister considers that a Legislative amendment is not required at this time. The Minister proposes to ensure that appointments to the Board will always provide the appropriate balance (as indicated February 27, 1979). A system of time limited and staggered appointments will be in-

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|---------------------------------------|-------------------|
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|---------------------------------------|-------------------|

MINISTRY OF
HEALTH
(cont'd)

troduced, replacing the current system of appointments whereby members of the Hospital Board are appointed at pleasure. This change can be implemented through an Order-in-Council without the necessity for legislative change.

The Minister has written to the Chairman of the Ontario Council of Health to ascertain what alternative systems for hospital appointments are in place in other jurisdictions. Once the Minister receives the report of the Council of Health, he will then be in a position to decide on the further course of enquiry. The Minister will release the report

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|---------------------------------------|-------------------|
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|---------------------------------------|-------------------|

MINISTRY OF
HEALTH
(cont'd)

when it is received and has been reviewed by the Ministry.

The Minister instituted enquiries of the Ontario Council of Health in an effort to gain necessary insights into the process in other jurisdictions. The Council's report has recently been received and is being considered by the Ministry.

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---|-------------------------|--|---------------------|-----------------------|--------------------------------------|---|--|
| <div>MINISTRY OF LABOUR</div> <div>Workmen's Compensation Board</div> | | | | | | | |
| 2 | 132 | That the Board either request jurisdictional determination from the courts or request that The Workmen's Compensation Act be amended to give the Board the power to both collect and off-set overpayments. | | | 3, Recommendation 31 | Amend The Workmen's Compensation Act to provide for statutory authority to recover or write-off overpayments. | Recommended amendment has yet to be enacted. |

APPENDIX C

STATISTICAL TABLES

COMPLAINT DISPOSITION SUMMARY
FISCAL YEAR 1980/81

NUMBER OF
COMPLAINTS

| NUMBER OF FILE OPENINGS/CLOSINGS | |
|-------------------------------------|-------|
| OPENED* | 4,022 |
| CLOSED | 5,083 |
| IN PROGRESS | 1,634 |

SETTLEMENT

STATUS:

| | |
|----------------------|-------|
| RESOLVED/INVOLVED | 2,108 |
| RESOLVED/INDEPENDENT | 43 |
| TOTAL RESOLVED | 2,151 |

NUMBER OF
COMPLAINTS

JURISDICTION

FINDINGS:

| | |
|----------------------------------|-------|
| WITHIN | 3,602 |
| OUTSIDE | 2,080 |
| NOT DETERMINED | 40 |
| INFORMATION REQUESTS/SUBMISSIONS | 460 |
| | 6,182 |

| | |
|---------------|-------|
| SUPPORTED | 185 |
| NOT SUPPORTED | 1,485 |

NOT RESOLVED:

REASONS:

FINAL ACTION

| | | | |
|--------------------------|-------|----------------------------------|-------|
| LISTEN | 266 | ABANDONED | 734 |
| EXPLAIN | 631 | WITHDRAWN | 445 |
| ADVISE | 223 | NO SOLUTION IDENTIFIED | 2 |
| REFER | 929 | CIRCUMSTANCES CHANGED | 4 |
| INQUIRE/REFER | 242 | INFORMATION REQUESTS/SUBMISSIONS | 460 |
| INQUIRE | 3,380 | OUTSIDE JURISDICTION | 1,966 |
| SUGGEST | 67 | REFUSE TO INVESTIGATE | 274 |
| RECOMMENDATION | 168 | OR FURTHER INVESTIGATE | 146 |
| REFUSE TO INVESTIGATE OR | 276 | RECOMMENDATION DENIED | 4,031 |
| FURTHER TO INVESTIGATE | | | |

RESULTS: (ONLY RESOLVED COMPLAINTS)

| | |
|------------------------------------|-------|
| FAVOUR COMPLAINANT | 666 |
| FAVOUR "GOVERNMENTAL ORGANIZATION" | 1,485 |
| | 2,151 |

*This figure includes 805 files
that were reopened.

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

| GOVERNMENT OF ONTARIO Ministries/Agencies | COMPLAINTS BY ORGANIZATION FISCAL YEAR 1980/81 | | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|---|-------------------------|---|-------|
| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | | |
| Agriculture and Food | 13 | 2 | | 15 |
| Agricultural Licensing and Registration Review Board | | 1 | | 1 |
| Crop Insurance Arbitration | 1 | | | 1 |
| Board of Ontario | 2 | | | 3 |
| Crop Insurance Commission | | 1 | | 6 |
| Farm Products Appeal Tribunal | | 6 | | 1 |
| Farm Products Marketing Board | | 1 | | |
| Ontario Chicken Producers' | | | | 1 |
| Marketing Board | | 1 | | |
| Ontario Cream Producers' | | | | 1 |
| Marketing Board | | 1 | | 3 |
| Ontario Drainage Tribunal | 3 | | | |
| Ontario Turkey Producers' | 1 | | | 1 |
| Marketing Board | | | | |
| Attorney General | 11 | 38 | 4 | 54 |
| Criminal Injuries Compensation Board | 6 | 5 | 1 | 12 |
| Land Compensation Board | 2 | 1 | | 3 |
| Ontario Municipal Board | 23 | 11 | 2 | 37 |
| Public Trustee | 13 | 3 | | 16 |

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|------------------------|-------------------------|-------------------|---|-------|
| <u>Ministries/Agencies</u> | | | | | |
| Colleges and Universities | 29 | 1 | | 2 | 32 |
| Colleges of Applied Arts & Technology | 23 | 3 | | | 26 |
| Community and Social Services | 60 | 64 | | 24 | 148 |
| Centres for the Develop- mentally Handicapped | 3 | 2 | | 2 | 7 |
| Training Schools | 22 | | | 2 | 24 |
| Total | 85 | 66 | | 28 | 179 |
| Social Assistance Review Board | 38 | 11 | 1 | 1 | 51 |
| Consumer and Commercial Relations Board of Censors | 89 | 18 | 4 | 4 | 115 |
| Commercial Registration Appeal Tribunal | 4 | | | | 4 |
| Liquor Control Board | 1 | 1 | | | 2 |
| Liquor Licence Appeal Tribunal | 10 | 5 | | | 15 |
| Liquor Licence Board | 1 | | | | 1 |
| Liquor Licence Board | 3 | 1 | | | 4 |
| Ontario Racing Commission | 1 | | | | 1 |
| Ontario Securities Commission | 1 | | | | 1 |
| Pension Commission of Ontario | 1 | 1 | | | 1 |
| Residential Premises Rent Review Board | 14 | 2 | | | 16 |
| Residential Tenancy Commission | 1 | | | 1 | 2 |

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|-----------------------------|------------------------|-------------------------|-------------------|---|-------|
| Correctional Services | 11 | 2 | | 3 | 16 |
| Correctional Centres | 476 | 94 | 3 | 39 | 612 |
| Detention Centres | 664 | 62 | 3 | 56 | 785 |
| Jails | 444 | 36 | 3 | 44 | 527 |
| Community Resource Centres | 16 | | | | 16 |
| Total | 1611 | 194 | 9 | 142 | 1956 |
| Board of Parole | 24 | 16 | | 1 | 41 |
| Culture and Recreation | 4 | | | 1 | 5 |
| Ontario Heritage Foundation | 1 | | | | 1 |
| Ontario Lottery Corporation | 4 | 1 | | | 5 |
| Province of Ontario | | | | | |
| Council for the Arts | 1 | | | | 1 |
| Education | 18 | 10 | | 2 | 30 |
| Energy | | | | | |
| Ontario Energy Board | 1 | 2 | | 1 | 2 |
| Ontario Hydro | 23 | 8 | 1 | 5 | 37 |
| Environment | | | | | |
| Environmental Appeal Board | 35 | 8 | | 2 | 45 |
| | | 1 | | | 1 |

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|--|------------------------|-------------------------|-------------------|---|-------|
| Government Services | 98 | 28 | | 1 | 127 |
| Public Service Superannuation Board | 7 | | | | 7 |
| Health | | | | | |
| Psychiatric Hospitals | 41 | 8 | | 1 | 50 |
| O.H.I.P. | 61 | 15 | 2 | 11 | 89 |
| | 27 | 7 | 1 | 4 | 39 |
| Total | 129 | 30 | 3 | 16 | 178 |
| Advisory Review Board (Mental Health) | | | | 1 | 1 |
| Board of Funeral Services | 1 | | | | 1 |
| Board of Ophthalmic Dispensers | 1 | | | | 1 |
| Board of Regents of Chiropody | 1 | 1 | | | 2 |
| Clarke Institute of Psychiatry | | 1 | | | 1 |
| Governing Board of Denture Therapists | 1 | | | | 1 |
| Health Disciplines Board | 11 | 5 | | 1 | 17 |
| Review Boards for Psychiatric Facilities | 1 | | | | 1 |
| Housing | | | | | |
| Local Housing Authorities | 18 | 5 | | 1 | 24 |
| Ontario Housing Corporation | 1 | | | | 1 |
| Ontario Land Corporation | 54 | 4 | | 6 | 64 |
| Ontario Mortgage Corporation | 2 | | | 1 | 3 |
| | 2 | | | | 2 |
| Industry and Tourism | 8 | | | | 8 |

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

| <u>Ministries/Agencies</u> | <u>WITHIN JURISDICTION</u> | <u>OUTSIDE JURISDICTION</u> | <u>NOT DETERMINED</u> | <u>INFORMATION REQUESTS/ SUBMISSIONS</u> | <u>TOTAL</u> |
|--|--------------------------------|---------------------------------|---------------------------|--|--------------|
| | 15 | 2 | | | 17 |
| Intergovernmental Affairs | | | | | |
| Labour | 33 | 15 | | 5 | 53 |
| Employment Standards - Panel of Referees | 3 | 1 | | | 4 |
| Ontario Human Rights Commission | 21 | 4 | | 3 | 28 |
| Ontario Labour Relations Board | 10 | 1 | | 1 | 12 |
| Workmen's Compensation Board | 726 | 219 | 4 | 135 | 1084 |
| Natural Resources | 104 | 76 | | 9 | 189 |
| Freshwater Fish Marketing Corporation | 1 | 1 | | | 2 |
| St. Lawrence Parks Commission | 1 | | | | 1 |
| Northern Affairs | 7 | | | 1 | 8 |
| Ontario Northland Transportation Commission | 2 | | | | 2 |
| Revenue | 47 | 12 | | 3 | 62 |
| Solicitor General | 5 | 3 | | | 8 |
| Coroner's Council | 1 | 1 | | | 2 |
| Hamilton-Wentworth Board of Commissioners of Police | | 1 | | | 1 |
| Ontario Police Commission | 22 | 5 | | | 27 |
| Ontario Provincial Police | 13 | 21 | | | 34 |
| Transportation and Communications | 136 | 22 | 2 | 3 | 163 |
| Ontario Highway Transport Board | 5 | 1 | | | 6 |
| Ontario Telephone Development Corporation | | 1 | | | 1 |
| Toronto Area Transit Operating Authority | 1 | | | | 1 |

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|------------------------|-------------------------|-------------------|---|-------|
| Treasury and Economics | 24 | 26 | | | 50 |
| Ontario Municipal Employees Retirement Board | 5 | 4 | | | 9 |
| Government of Ontario Other | | | | | |
| Management Board | | 3 | | | 3 |
| Civil Service Commission | 8 | 1 | | 1 | 10 |
| Public Service Grievance Board | | 1 | | | 1 |
| Niagara Escarpment Commission | 6 | 2 | | | 8 |
| Lieutenant Governor | | 1 | | | 1 |
| Office of the Assembly | | 2 | | 1 | 3 |
| Office of the Premier/Cabinet Office | | 2 | | | 2 |
| Office of the Ombudsman | | | | 4 | 4 |
| Executive Council | | 4 | | | 4 |
| Ontario Government Other | | 1 | | 1 | 2 |
| Government of Ontario Total | 3628 | 927 | 26 | 391 | 4972 |
| Courts | | 171 | | 4 | 175 |
| Total | | 171 | | 4 | 175 |

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

| FEDERAL GOVERNMENT DEPARTMENT/AGENCIES | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|------------------------|-------------------------|-------------------|---|-------|
| Air Canada | | 3 | | | 3 |
| Canadian Penitentiary Services | | 2 | | | 2 |
| Federal Penitentiaries | | 16 | | 2 | 18 |
| Central Mortgage and Housing | | 3 | | 2 | 5 |
| Consumer and Corporate Affairs | | 6 | | 1 | 7 |
| Employment and Immigration | | 46 | | 1 | 47 |
| Health and Welfare | | 37 | | 5 | 42 |
| Indian Affairs & Northern Development | | 5 | | 1 | 6 |
| National Parole Board | | 3 | | | 3 |
| Post Office | | 8 | | | 8 |
| Public Service Commission | | 1 | | | 1 |
| Revenue Canada - Taxation | | 25 | | 1 | 26 |
| Royal Canadian Mounted Police | | 6 | | | 6 |
| Transport | | 6 | | | 6 |
| Veterans' Affairs | | 6 | | | 6 |
| Federal Government - Other | | 25 | | 4 | 29 |
| Total | | 198 | | 17 | 215 |

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|------------------------|-------------------------|-------------------|---|-------|
| <u>PRIVATE</u> | | | | | |
| Associations/Groups | | 36 | 1 | 8 | 45 |
| Children's Aid Society | | 16 | | 1 | 17 |
| Catholic Children's Aid Society | | 1 | | 1 | 2 |
| Complaint Bureaus | | 1 | | 1 | 21 |
| Doctors - Patients | | 20 | | 1 | 18 |
| Hospitals | | 15 | | 3 | 50 |
| Lawyers - Clients | | 48 | | 2 | 24 |
| Law Society of Upper Canada | | 22 | | 9 | 275 |
| Private Business | | 266 | | 5 | 96 |
| Private Individual | | 91 | | 1 | 4 |
| Universities - Private | | 3 | | | 2 |
| Member of Parliament | | 2 | | | 2 |
| Private - Other | | 5 | | | 5 |
| Total | | 526 | 1 | 33 | 560 |
| <u>MUNICIPALITIES/LOCAL AUTHORITIES</u> | | | | | |
| Municipal Conservation Authority | | 5 | | | 5 |
| Municipal Boards of Education | | 23 | | 1 | 24 |
| Municipal Fire Department | | 2 | | | 2 |
| Municipal Garbage | | 2 | | | 2 |
| Municipal Governing Body | | 65 | | 3 | 68 |
| Municipal Housing | | 1 | | | 1 |

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

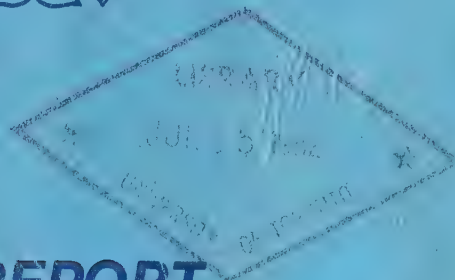
| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|------------------------------|------------------------|-------------------------|-------------------|---|-------|
| Municipal Hydro | | 3 | | | 3 |
| Municipal Parks & Recreation | | 2 | | | 2 |
| Municipal Planning Boards | | 15 | | 2 | 17 |
| Municipal Police | | 83 | | 2 | 85 |
| Municipal Public Health | | 1 | | | 1 |
| Municipal Roads | | 11 | | | 11 |
| Municipal Sewers | | 6 | 1 | | 7 |
| Municipal Taxes | | 8 | | | 8 |
| Municipal Transit | | 2 | | | 2 |
| Municipal Water | | 3 | | 1 | 4 |
| Municipal Welfare | | 17 | | 1 | 18 |
| Committees of Adjustment | | 3 | | | 3 |
| Municipal - Other | | 10 | | 3 | 13 |
| Total | | 262 | 1 | 13 | 276 |
| INTERNATIONAL | | 3 | | | 3 |
| Total | | 3 | | | 3 |

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

| OTHER PROVINCES | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---------------------------|------------------------|-------------------------|-------------------|---|-----------------|
| Total | — | <u>19</u> 19 | — | <u>2</u> 2 | <u>21</u> 21 |
| NO ORGANIZATION SPECIFIED | | | | | |
| Total | — | — | <u>12</u> 12 | <u>2</u> 2 | <u>14</u> 14 |
| OVERALL TOTAL | <u>3628</u> | <u>2106</u> | <u>40</u> | <u>462</u> | <u>6236*</u> |

*This figure exceeds the number of closed complaints (6182) because some complaints involve more than one organization.

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NINTH REPORT

The Ombudsman | Ontario

APRIL 1, 1981 - MARCH 31, 1982



NINTH REPORT

The Ombudsman | Ontario

APRIL 1, 1981 - MARCH 31, 1982

HON. DONALD R. MORAND

The Ombudsman | Ontario

125 QUEEN'S PARK, TORONTO, ONTARIO
M5S 2C7
TELEPHONE (416) 596-3300

June 25th, 1982

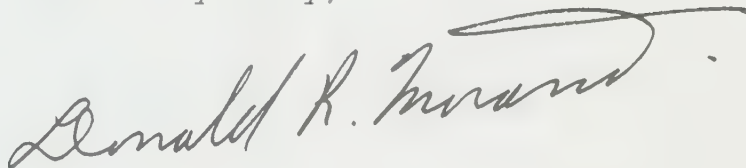
The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Mr. Speaker:

It is with pleasure that I present the
Ninth Annual Report of the Ombudsman for the
period April 1, 1981 to March 31, 1982.

This report is submitted pursuant to
Section 12 of the Ombudsman Act.

Yours very truly,

A handwritten signature in dark ink, reading "Donald R. Morand". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Donald R. Morand

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CHAPTER ONE

INTRODUCTION

On January 2, 1979, my appointment as Ombudsman took effect. Having now had more than three years of experience as Ombudsman, I feel able to make some general observations.

Although a single statute - the Ombudsman Act - governs all our work, in reality the Ombudsman in Ontario operates in many different spheres involving several different functions. Our mandate extends from complaints against simple instances of administrative inefficiency, to complaints against quasi-judicial decisions of the myriad of provincial administrative tribunals (themselves ranging in kind from the Ontario Municipal Board to the Health Disciplines Board), to allegations of unjust deprivation of privileges or loss of remission in the correctional system.

When we respond to a citizen's complaint that his Workmen's Compensation cheque has been delayed, and make a telephone call to a Workmen's Compensation Board official, we are performing quite a different function from when we pore over the evidence submitted in support of a licensing application before the Ontario Highway Transport Board, because the unsuccessful applicant has complained that the Board unreasonably turned it down. We perform yet another function when we visit a patient in a psychiatric hospital and explain to him his rights under the Mental Health Act if he wishes to refuse treatment.

The Ombudsman's statutory function is clear: to investigate and report. In practice, the people of Ontario call on my Office to do more than that: they call on us to help them speed up bureaucratic action, to help them find their way through the seemingly endless maze of government offices, to translate legislation directly affecting them into language they can understand.

A few years ago this Office was criticized for devoting so many of its resources to handling non-jurisdictional enquiries and complaints. I am proud of the fact that we have increased our efficiency so that we can place appropriate emphasis on our primary function of investigating complaints within our jurisdiction while still being able to respond to the large number of non-jurisdictional complaints the Office receives each year.

(Our task might be easier if government offices at all levels communicated better with the public. The volume of enquiries we receive makes it clear that the public has a

very imperfect understanding of government programs and institutions, and the laws that commonly affect them.)

The challenge my Office has faced over the past years has been to respond to a large volume of jurisdictional complaints without expanding our staff to an unmanageable and unaffordable size.

Since my appointment, cost-of-living increases to employees and other standard increases in the cost of services and supplies have affected our yearly budgets.

However, when these increases are computed, I am pleased to state our expenditures over this three-year period are approximately \$250,000 less than the above-mentioned increases. In times of fiscal restraint, I am naturally proud of this accomplishment. Along with these savings, we have also substantially increased the number of employees conducting investigations.

During the period covered by this Ninth Report, April 1, 1981 to March 31, 1982, my Office received 9,567 complaints and information requests. This figure is approximately 10% higher than the previous year.

Again this year, I am pleased to report that the number of in-progress investigations carried over at year end has been further reduced to 1,457. This is the lowest carry-over of in-progress cases in the previous four years.

These figures on in-progress cases are critical because our efforts to maintain the caseload at manageable levels will allow our Office to continue to meet the goal of providing prompt, courteous and effective service to the citizens of Ontario.

During this reporting period the Office closed a total of 10,175 complaints and information requests.

The majority of these were closed within several months of their receipt by my Office. In fact, 7,164 or 70% were handled within one month. 88% or 8,947 were closed within six months and only 7% or 691 took longer than one year to close.

Since my Office is continually reviewing its procedures, seeking new methods to deal with complaints more expeditiously, consideration is being given to changing the manner in which statistical information is presented in future annual reports. It is my intention to report statistical information in a simpler fashion, based on the number of complaints dealt with by my Office. Little

reference will be made to the term "files", as this term has been the source of some confusion for our readers in the past.

The chart found on page 13 shows duration-to-closing information for the fiscal year 1981-1982 along with other statistical highlights contained in this report.

During the year we took steps to increase our ability to investigate complaints against the Workmen's Compensation Board more promptly. We recognized the need to reduce the number of files in progress in that area. At the same time, we faced a large number of previously closed complaints which required fresh investigation as a result of the Legislative Assembly's response to a recommendation denied by the Workmen's Compensation Board. This group of cases is discussed in more detail below.

To increase our staff resources until the number of in-progress complaints stabilized and then reduced, three investigators were hired on short-term contracts. As well, four new investigators have been appointed to the permanent staff. (Two of these replaced investigators who had resigned.)

We also reviewed our procedures in handling and investigating Workmen's Compensation complaint files. Changes were made to ensure more regular contact with complainants. We have also added procedures to enable us to focus more precisely at the earliest stage of the investigation on the issues in dispute between the complainant and the Workmen's Compensation Board.

Finally, meetings have been held between members of our staff and officials of the Workmen's Compensation Board to discuss ways our respective offices might co-operate to facilitate our investigation of complaints.

In my Sixth Report to the Legislature, I reported on a case which related to how the Workmen's Compensation Board assesses workers for permanent disability awards under section 42(1) [now section 43(1)] of the Workmen's Compensation Act. This section states in part:

Where permanent disability results from the injury, the impairment of earning capacity of the employee shall be estimated from the nature and degree of the injury...

I came to the conclusion that the Board was unreasonable, in assessing this particular worker, in limiting its

consideration to medical findings. I felt that in accordance with section 42(1), the Board should have considered all relevant factors, such as the worker's age and skills, in assessing the degree of his impairment of earning capacity. I recommended that the complainant's permanent disability award be increased. The Board disagreed with my interpretation of section 42(1) and refused to implement my recommendation.

While considering my Sixth Report, the Select Committee on the Ombudsman agreed with my interpretation of section 42(1) and recommended in its Eighth Report that the complainant's permanent disability award be increased.

When I learned that the Select Committee supported my interpretation of section 42(1), I conducted a review of Workmen's Compensation Board cases then under investigation in my Office, and determined that 135 complaints concerned the level of permanent disability award. In none of these cases had the Board considered relevant factors other than the medical findings. I concluded that the Board's decisions were therefore unreasonable, and I recommended that the Board reconsider each case, considering all the relevant factors.

When the Select Committee's Report was debated in the Legislature, the Minister of Labour advised that neither he nor the Board could accept the Committee's recommendation. The Minister preferred a different legal opinion which supported the Board's interpretation of section 42(1). The Legislature agreed with the Minister's position and did not accept the Select Committee's recommendation.

Since the 135 cases were not to be reconsidered by the Board, during the Select Committee hearings in September, 1981, I volunteered to investigate the cases further. My purpose would be to determine if the level of permanent disability assessed by the Board for each worker was reasonable in view of the medical findings. In other words, accepting the Board's interpretation of section 42(1), was the decision reasonable? I would also consider if the Board's decision on the worker's entitlement to a supplement under section 42(5) [now section 43(5)] was reasonable. (This section gives the Board authority to award a temporary supplementary pension "where the impairment of earning capacity of the employee is significantly greater than is usual for the nature and degree of his injury.") The Select Committee requested that this work be completed by July, 1982.

In November, 1981, my Office contacted the 135 complainants. Of them, 106 requested that their complaints be investigated further. By March 31, 1982, 63 investigations had been completed. I expect that the remainder will be completed by the end of June, 1982.

In addition, I instructed an investigator to review the remaining cases where the complainants had not requested that we investigate further, to ensure that there had been no substantial injustice which we ought to pursue with the Board notwithstanding the complainant's apparent lack of interest.

I will be able to discuss the results of these investigations with the Select Committee at its next hearings.

It would be naive to think that the challenge of meeting never-ceasing complaints with limited resources has been met and overcome. The difficult economic times in which we live can be expected to produce a higher volume of complaints. This is easiest to see in the correctional field, where many of Ontario's correctional institutions are housing more inmates than they were optimally designed to accommodate. Our Office must be prepared to handle more inmate and staff complaints about overcrowding and under-servicing. Or, we might predict that the unavailability of summer jobs for post-secondary students will lead to more applications to the Ontario Student Assistance Program, ultimately leading to more complaints to the Ombudsman.

We can try to be more efficient and we can to a small extent increase our resources. At present, 105 of the total 122 employees are, directly or indirectly, totally or partially, involved in the investigation of complaints. We will also continue to try to get at the root causes of complaints, rather than simply deal with them one by one. For example, during the year I considered three particular complaints against the Workmen's Compensation Board which served to illustrate a difference of opinion over the interpretation of the definition of "accident" contained in section 1(1)(a)(iii) of the Workmen's Compensation Act.

Section 1(1)(a)(iii) was enacted in 1963 to provide that:

"accident" includes,

(iii) disablement arising out of and
in the course of the employment.

Directive 2 of "Board Policies and Administrative Directives", dated October 15, 1963, contains the Board's policy on the application of this part of the definition:

Entitlement under the amending Act applying to accidents happening on and after the 3rd day of April, 1963, which includes 'disablement arising out of and in the course of employment' requires that the disablement which the employee suffers must have some causal relationship with the work being performed, that is, it is not sufficient that the disablement comes on during work, but rather there must be something about the work which can be considered to have caused the disablement to come on, such as strenuous work, awkward position, unaccustomed strain, or even a movement arising out of the work which is reasonable to consider has caused the disablement.

In each of these three cases, the injured employee had, prior to injury, worked for some length of time at a job which was relatively light, but which called for repetitive movement. The medical evidence in each case suggested that each worker's disability was, at least in part, a result of the repetitive action required.

The primary reason given by the Board for denying benefits in each case was that the worker was unable to identify a specific incident at work or an unusual movement which had brought on the disability.

In my opinion, a specific incident or an unusual movement is not required to satisfy section 1(1)(a)(iii) of the Workmen's Compensation Act and the Board's directive. There need be only "a movement arising out of the work which is reasonable to consider has caused the disablement". This might be a repetitive motion or heavy labour over a period of time. In my opinion, in deciding disablement cases the Board should consider the medical evidence as well as the work history.

I believe that my opinion follows the decision of the Supreme Court of Canada in Workmen's Compensation Board v. Theed, [1940] 3 S.C.R. 561, a case involving the Workmen's Compensation Board of New Brunswick.

Careful readers of this Office's annual reports and the reports of the Select Committee on the Ombudsman will

notice that we have continued to pursue with the Ontario Health Insurance Plan the extent of the right of a claimant to appeal a decision of the General Manager of OHIP, and the information given out by OHIP about appeal rights.

PRIVATE HEARINGS

As in the past, the Office continued to conduct private hearings throughout the province. In my Eighth Report, I indicated the Office had concentrated its efforts on smaller communities during 1980-81 and would return to visiting larger municipalities in 1981-82. Returning to this expanded format, the Office had an increase in the number of complaints received and number of interviews conducted.

In support of this expanded format, my Office revised our newspaper advertisement and scheduled a three-week radio campaign in most metropolitan centres throughout the province.

Hearings throughout northern Ontario are conducted by staff members from our two regional Offices (North Bay and Thunder Bay) and are supplemented when necessary by staff from the Toronto Office.

| Date | | Location | No. of Complaints Received | No. of Interviews Conducted |
|-------------|-----|---------------|----------------------------------|-----------------------------------|
| <u>1981</u> | | | | |
| April | 1 | Sioux Lookout | 11 | 9 |
| | 2/3 | Kenora | 27 | 26 |
| | 7 | Alexandria | 13 | 13 |
| | 8 | Cornwall | 30 | 30 |
| | 9 | Morrisburg | 8 | 8 |
| | 21 | Atikokan | 7 | 7 |
| | 22 | Rainy River | 4 | 4 |
| | 23 | Fort Frances | 5 | 5 |
| | 28 | Leamington | 22 | 21 |
| | 28 | Pembroke | 33 | 32 |
| | 29 | Tilbury | 19 | 18 |
| | 29 | Deep River | 5 | 5 |
| | 30 | Wallaceburg | 21 | 20 |
| | 30 | Mattawa | 11 | 10 |
| May | 12 | White River | 3 | 3 |
| | 13 | Marathon | 5 | 5 |
| | 20 | Aylmer | 7 | 7 |
| | 21 | Port Stanley | 9 | 9 |

| Date | | Location | No. of Complaints Received | No. of Interviews Conducted |
|-------------|-------|---------------------|----------------------------------|-----------------------------------|
| <u>1981</u> | | | | |
| May | 26 | Timmins | 24 | 24 |
| | 27 | Kirkland Lake | 21 | 21 |
| June | 9 | Fort Erie | 17 | 17 |
| | 9 | Nakina | 0 | 0 |
| | 10 | Niagara Falls | 17 | 17 |
| | 10 | Geraldton | 4 | 4 |
| | 11 | Niagara-on-the-lake | 15 | 15 |
| | 11 | Longlac | 12 | 12 |
| | 12 | Beardmore | 0 | 0 |
| | 23 | Armstrong | 10 | 7 |
| July | 21 | Midland | 22 | 20 |
| | 22 | Elmvale | 9 | 8 |
| | 22 | Wawa | 5 | 5 |
| | 23 | Bracebridge | 5 | 5 |
| | 23 | Chapleau | 2 | 2 |
| Aug | 18/19 | Sault Ste. Marie | 47 | 47 |
| | 20 | Blind River | 14 | 14 |
| | 25 | Stratford | 18 | 17 |
| | 26 | Listowel | 9 | 9 |
| Sept. | 1 | Pickle Lake | 6 | 5 |
| | 2 | Savant Lake | 3 | 3 |
| | 3 | Dryden | 17 | 17 |
| | 4 | Ignace | 4 | 4 |
| | 15 | Guelph | 22 | 22 |
| | 16 | Ancaster | 2 | 2 |
| | 17 | Oakville | 2 | 2 |
| | 23 | Kapuskasing | 12 | 12 |
| | 24 | Hearst | 12 | 12 |
| | 29 | Fort Frances | 4 | 4 |
| Sept. | 30/ | | | |
| Oct. | 1 | Kenora | 21 | 21 |
| Oct. | 6 | Cambridge | 17 | 17 |
| | 7/8 | Kitchener | 22 | 22 |
| | 14 | Parry Sound | 16 | 16 |
| | 15 | Burk's Falls | 7 | 7 |
| | 26 | Vermillion Bay | 6 | 4 |
| | 27 | Perth | 23 | 23 |
| | 27/28 | Red Lake | 7 | 7 |
| Nov. | 17 | Belleville | 12 | 12 |
| | 18/19 | Kingston | 68 | 68 |

| Date | | Location | No. of Complaints Received | No. of Interviews Conducted |
|-------------|-------|----------------|----------------------------------|-----------------------------------|
| <u>1981</u> | | | | |
| Nov. | 24/25 | Sudbury | 40 | 38 |
| | 24 | Manitouwadge | 4 | 4 |
| | 26 | Terrance Bay | 6 | 6 |
| | 27 | Red Rock | 3 | 3 |
| Dec. | 3/4 | Ottawa | 44 | 44 |
| | 15 | Elliot Lake | 4 | 4 |
| <u>1982</u> | | | | |
| Jan. | 5 | Sarnia | 19 | 19 |
| | 6 | Windsor | 75 | 74 |
| | 12 | Sioux Lookout | 6 | 6 |
| | 13/14 | Kenora | 12 | 12 |
| | 26 | Woodstock | 7 | 7 |
| | 27/28 | London | 50 | 50 |
| Feb. | 9 | Brantford | 35 | 35 |
| | 9 | Dryden | 3 | 3 |
| | 10/11 | Hamilton | 71 | 71 |
| | 10/11 | Fort Frances | 15 | 15 |
| | 16 | Iroquois Falls | 8 | 8 |
| | 17 | New Liskeard | 12 | 12 |
| | 23 | Wingham | 4 | 4 |
| | 24 | Palmerston | 8 | 8 |
| | 25 | Orangeville | 6 | 6 |
| March | 9 | Renfrew | 10 | 9 |
| | 10 | Arnprior | 5 | 5 |
| | 11 | Carleton Place | 1 | 1 |
| | 11 | Atikokan | 9 | 9 |
| | 30 | Brockville | 21 | 18 |
| | 31 | Cornwall | 29 | 29 |
| | | | <u>1,281</u> | <u>1,256</u> |

VISITS TO INDIAN RESERVES AND SETTLEMENTS

Members of the staff from the Regional Services Directorate were able to visit 19 Indian reserves and settlements in Ontario, in order to offer the services of the Ombudsman to our native population.

During the past twelve months, the bands visited were located in northern Ontario. Due to the isolation of many settlements from the closest non-Indian community, it is

necessary for our staff representatives to fly into these locations. Without such personal contact, the majority of our Indian residents would never know the role of the Ombudsman and be able to express their problems.

| <u>Date</u> | <u>Location</u> |
|-------------|----------------------|
| <u>1981</u> | |
| April 22 | Manitou Rapids |
| 24 | Couchiching |
| 24 | Nicickousemenecaning |
| March 12 | Pic Mobert |
| May 14 | Pic Heron |
| 14 | Pays Plat |
| June 11 | Long Lake #58 |
| 11 | Long Lake #77 |
| 24 | Gull Bay |
| Sept. 28 | Naicatchewenin |
| Dec. 15 | Rocky Bay |
| 15 | Lake Helen |
| <u>1982</u> | |
| March 11 | Shoal Lake #39 |
| 11 | Shoal Lake #40 |
| March 15 | Winisk |
| to | Attawapiskat |
| 20 | Kahechewan |
| | Fort Albany |
| | Moosonee |

CONFERENCES ATTENDED

Since its inception, the Office of the Ombudsman has taken part in International Ombudsman affairs. As this Province has, in my opinion, one of the most efficient Offices in the world, I feel it is necessary to keep in close contact with other Ombudsmen's offices to ensure we maintain our pre-eminence.

While attending the International Ombudsman Institute meeting in Israel in 1980 I was elected to the Consultative Committee. This Committee is the sole administrative

body of the Institute and has as one of its duties the organizing of the next world conference.

During the past year I had the opportunity of visiting the Offices of Ombudsmen in Hawaii, Fiji, Australia and New Zealand. This trip coincided with a meeting of the Consultative Committee of the International Ombudsman Institute which was held in Fiji in January of this year.

In late 1981, it became apparent that there was a good possibility I would be appointed Commissioner under the proposed Freedom of Information Act. In Australia and New Zealand the Offices of the Ombudsmen are the complaint mechanism to which freedom of information complaints may be taken. It made eminent sense then to spend time with those involved in the pending implementation of their freedom of information acts.

I was fortunate to spend a great deal of time with Sir James Wicks, Privacy Commissioner, in Wellington and Mr. James Cameron who has the equivalent position in New Zealand to our Deputy Attorney General. He was also a member of the Danks Committee, the Committee responsible for the drafting and implementation of freedom of information legislation in New Zealand.

I also attended seminars dealing with administrative law through the Canadian Institute of Advanced Legal Studies and the Canadian Ombudsman Conference held each year in a provincial location.

VISITS BY OTHER OMBUDSMEN

Again, over the past year my Office had the distinct pleasure of hosting a great many distinguished guests. Ombudsmen from Sweden and Trinidad/Tobago, as well as many from the other provinces in Canada, and the Assistant Ombudsman from Jamaica were among the visitors.

As well, we have been visited by several representatives of other countries. Many were interested in reviewing our procedures, methods of investigation and internal file control and record keeping.

Since, in my opinion, the Ombudsman's Office in the Province of Ontario is the most efficient of all Ombudsmen's offices, we can expect a continued flow of visitors to our Office throughout the next year.

DETAILED SUMMARIES

Some 20 complaint summaries are presented in Chapter Two. All are interesting; however, I recommend a few cases found on pages 17, 27, 49, and 59, which are particularly noteworthy.

The majority of the cases presented in this report involve cases in which we were able to be of assistance to the complainant. It would appear that we support the vast number of complaints to my Office. However, this is not true. Only about 30% of complaints were resolved in favour of the complainant.

Unlike the Eighth Report where my Office had only two cases where my recommendations were not adopted, this report contains eight cases where my recommendations were not adopted. One deals with the Ministry of Consumer and Commercial Relations, found on page 19, three deal with the Ministry of Health and are found on pages 33 to 43, and four relate to the Ministry of Labour, Workmen's Compensation Board, found on pages 62 to 71.

RECOMMENDATIONS DENIED AND

SECTION 22(3)(d) OR (e) RECOMMENDATIONS

As a means of taking inventory of all cases since the inception of the Office of the Ombudsman where either: 1) a recommendation under s. 22(3) of the Ombudsman Act was denied by the governmental organization to which it was addressed, or 2) a recommendation was made pursuant to s. 22(3)(d) or (e) that a practice be altered or a law reconsidered, I have appended, in each Report since my Sixth Report, two charts. These charts, which in this Report appear as Appendices A and B at pages 72 to 84, summarize the recommendations made under the appropriate categories, and the disposition of these recommendations by the governmental organizations, and where appropriate, by the Select Committee on the Ombudsman. The charts summarize only cases outstanding as of March 31, 1982, that is, cases where it is anticipated that some further action will be taken either by the governmental organization or by the Select Committee.

STATISTICAL HIGHLIGHTS

FILES

| | |
|--------|---------|
| Opened | 3,217* |
| Closed | 3,255** |

No Follow-Up Complaints and Information Requests:

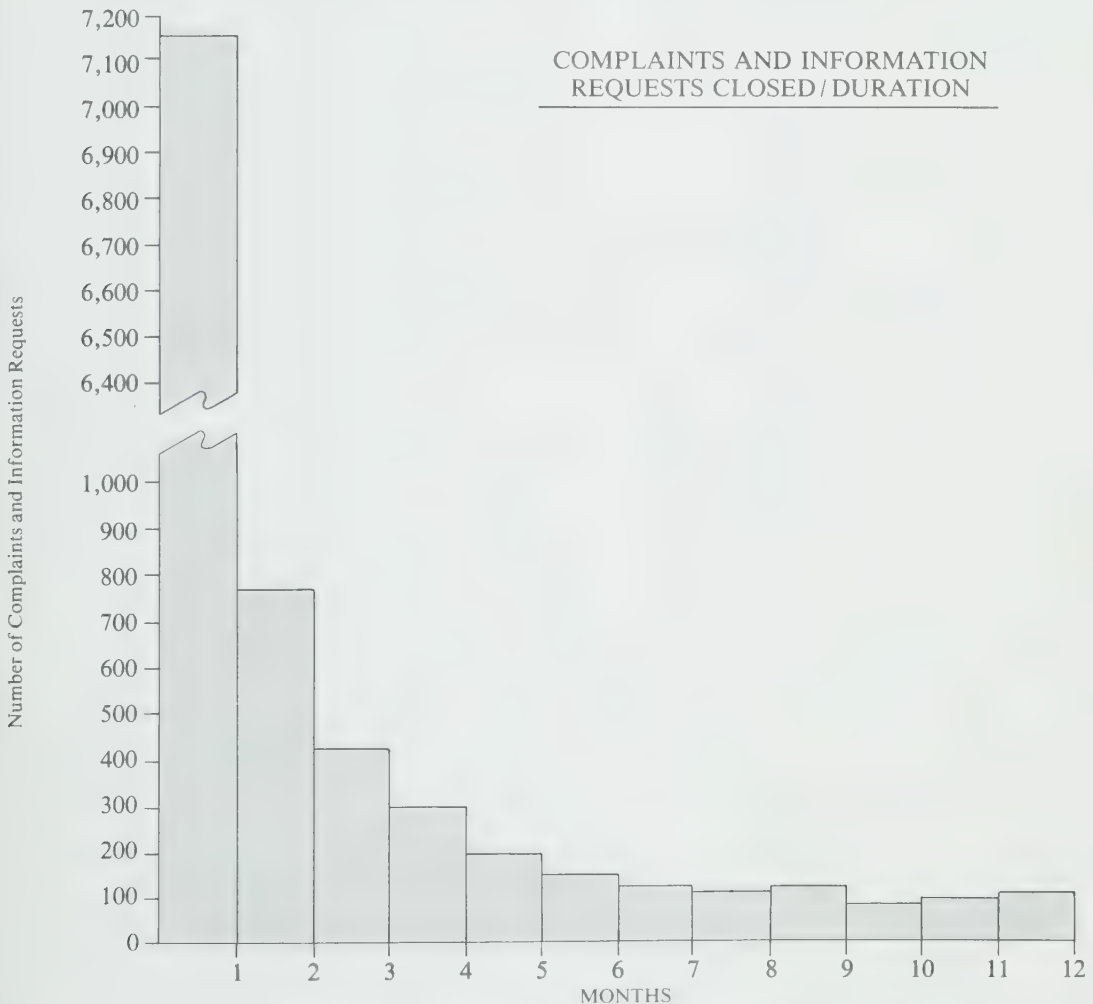
6,350*

CLOSED COMPLAINTS DOCUMENTED IN FILES:

| | |
|----------------------|---------|
| Within Jurisdiction | 2,166 |
| Information Requests | 212 |
| Not Determined | 201 |
| Outside Jurisdiction | 1,246 |
| Total | 3,825** |

*Overall the Office *received* 9,567 new complaints and information requests and *closed* 10,175 of the same.

**Some closed files involved more than one complaint.



The above histogram covers 93.2% of the 10,175 complaints and information requests closed by the Office between April 1, 1981 and March 31, 1982 and includes their duration values. A further 691 complaints or 6.8% of the total required more than 12 months to close.

CHAPTER TWO

DETAILED CASE SUMMARIES

MINISTRY OF
COLLEGES AND UNIVERSITIES

DETAILED SUMMARY NO. 1

This complainant wrote to the Ombudsman on March 19, 1981 concerning a decision rendered by the Ministry of Education. She contended that the Ministry had acted unreasonably in refusing to grant her a Letter of Eligibility.

The complainant attended public school in Nova Scotia and later a university in New Brunswick where she received a Bachelor of Arts degree in 1962 and a Bachelor of Education degree in 1963. She contended that her education was equivalent to that received by a student in Ontario and that she should be allowed to teach in Ontario. She felt that it should be irrelevant whether she completed seventeen years of academic training as long as she received equivalent educational training in her sixteen years of schooling. She contended that the Ministry should grant her a Letter of Eligibility.

The Ombudsman notified the Minister of Education of his intention to investigate this complaint and requested a statement of the Ministry's position. The Ministry replied that under the current Regulations, seventeen years of acceptable schooling, including a recognized degree plus one year of professional education, were required for teachers trained in Ontario. The Ministry indicated that as the complainant had submitted evidence of having completed, subsequent to Grade 12, twenty-three university courses including the required teacher training, she had only to complete two additional university courses in order to be granted a Letter of Eligibility.

During the course of our investigation, our Office reviewed the courses which the Ministry had counted towards the requirement for a Letter of Eligibility and noted that it had only recognized one credit for three practical music courses taken by the complainant while studying at university. Our investigator inquired into this matter and was informed that the Ministry assumed that the music courses were not regular university courses equal in weight to the other courses for which the complainant had received credit. We therefore wrote to the Registrar of the university in order to obtain further information in this regard. The Registrar responded in a letter stating that "at that date they (the three practical music courses) were equivalent to practical subjects now offered in the degree program which certainly are treated in exactly the same way as are other subjects in the programs."

We then wrote to the Manager of the Registrar Services Section, Ministry of Education, requesting that the Ministry reconsider the number of courses which could be counted towards the complainant's Letter of Eligibility in light of the information provided by the Registrar of the university to our Office. The Manager of the Registrar Services Section responded to our letter indicating that on the basis of the information submitted to us by the university, the Ministry was prepared to give the complainant credit for the three courses in music. As a result, the complainant satisfied the academic requirements for a Letter of Eligibility valid in the Intermediate and Senior Divisions.

As the complaint was resolved to the satisfaction of the complainant, the Ombudsman terminated his investigation and the file on the matter was closed on March 3, 1982.

MINISTRY OF
COMMUNITY AND SOCIAL SERVICES

DETAILED SUMMARY NO. 2

This complaint was registered with the Office of the Ombudsman in June, 1979, through the office of the complainant's Member of Provincial Parliament.

The complainant contended that following a hearing in May, 1979, the Social Assistance Review Board had upheld a decision of the Director of Family Benefits to deny her reclassification as a disabled person within the meaning of the Family Benefits Act and Regulation. She was of the view that the Board's decision was unreasonable.

Accordingly, the Ombudsman notified the Deputy Minister of Community and Social Services and the Chairman of the Social Assistance Review Board of his intention to investigate this matter. Responses were received from the Chairman and from the Director of Family Benefits on behalf of the Deputy Minister, shortly thereafter.

During the course of the Ombudsman's investigation the files maintained by the Board and the Ministry were examined. Extensive interviews were conducted by the Ombudsman's investigator with the complainant.

On the basis of the information obtained primarily from the Board's own file, it appeared to the Ombudsman that the medical information which was presented on the complainant's behalf at the hearing, strongly supported her appeal that she was improperly classified. In particular the evidence provided by her doctors and her Ministry field worker, indicated that her multiple disabilities including chronic urinary problems, pinpoint vision, a hearing impairment, and spinal difficulties, rendered her severely limited in her activities pertaining to normal daily living. Therefore, the Ombudsman came to the possible conclusion that the decision of the Board was unreasonable in light of the information which had been presented to it at the complainant's hearing. The Ombudsman tentatively recommended that the Board reconsider its decision, rescind the decision of the Director of Family Benefits and direct him to grant the complainant an allowance under the Family Benefits Act as a disabled person.

Since the Ombudsman felt that the Board and the Ministry might be adversely affected by his possible conclusion and recommendation, he accorded them the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of the Ombudsman Act.

Shortly thereafter the Ombudsman received notice from the Board that the Board was not opposed to reconsidering

its decision. A response from the Director of Family Benefits indicated that he was willing to file the Appeal Form for the reconsideration hearing. This hearing was held in the complainant's home at the end of 1980.

Early in 1981 the Ombudsman was advised by the Board that following reconsideration of its decision the Board had concluded that the complainant was in fact a disabled person within the meaning of the Family Benefits Act. The Board had directed the Director of Family Benefits to increase the complainant's allowance to reflect this classification.

As this resolution was satisfactory to both the Ombudsman and the complainant, the file was closed on April 30, 1981.

DETAILED SUMMARY NO. 3

A Member of the Provincial Parliament from southern Ontario referred this complaint to the Office of the Ombudsman in October of 1981. It related to a decision of the Ministry of Community and Social Services.

The complainant had been denied an allowance under the Family Benefits Act on the ground that his assets exceeded the maximum allowable under the legislation.

After discussing the complaint with the M.P.P., the Ombudsman contacted the complainant to obtain further clarification of the reasons for the denial of Family Benefits. We were advised by the complainant's wife that the complainant was in business for himself until 1979 at which time it was diagnosed that he had multiple sclerosis. He was no longer able to operate his business and had applied to the Ministry of Community and Social Services for Family Benefits. He was working part-time as a watchman but the income was not sufficient to support his wife and three children.

Although it was determined by the Ombudsman that the complaint was not within his jurisdiction, as the decision of the Director of Family Benefits to deny assistance had not been appealed to the Social Assistance Review Board, inquiries were made with officials of the Income Maintenance Branch and the complainant's lawyer. Ministry officials explained to the Ombudsman that the complainant was not eligible for assistance because of the value of the assets remaining from his business. With the co-operation of the Ministry, arrangements were made with the complainant's lawyer to provide the Ministry with a full

account of the complainant's financial circumstances, particularly with respect to the dissolution of his business. Confirmation was also obtained that affidavits had been filed with the Ministry of Revenue indicating that the business had been dissolved.

Shortly thereafter, the Ombudsman contacted officials in the Ministry of Community and Social Services who confirmed that the correspondence which had been received from the complainant's lawyer had clarified his financial circumstances. Eligibility for Family Benefits as a disabled person was to be granted retroactive to four months, which was the maximum possible.

Subsequently, the Ombudsman advised the complainants of the Ministry's actions and they indicated their satisfaction with the outcome.

The file was therefore closed on November 17, 1981.

MINISTRY OF
CONSUMER AND COMMERCIAL RELATIONS

LIQUOR CONTROL BOARD OF ONTARIO

RECOMMENDATIONS DENIED

DETAILED SUMMARY NO. 4

This complaint against the Liquor Control Board of Ontario was received on December 6, 1978. The complainant contended that the Board unreasonably refused him authorization to establish a liquor agency in his commercial premises located in a municipal airport in northern Ontario.

The complainant was advised in a letter from the then Minister of Consumer and Commercial Relations that agency stores must be "sufficiently remote" from a Board outlet and that any outlet established at a municipal airport would have to be operated by Board employees. The Ministry considered an agency store to be "sufficiently remote" if it was located at least 25 miles away from a Board outlet.

The complainant pointed out that in another area of northern Ontario, a liquor agency is operating in a general store in the off-season and it is only 11 miles from a Board outlet. He argued that an agency store at the airport would eliminate inconvenience to fly-in tourists wanting liquor and it would enhance the sagging tourist trade in the area.

Having received the Board's statement in reply to the notification of our intention to investigate this complaint, the file was assigned for investigation.

Our investigator learned that the complainant and his wife operate a small store in a municipal airport building in which they sell light snacks, tobacco products and confections. The store caters to air travellers, a large number of whom are United States residents who hunt, fish and vacation in Canada. The complainant wished to establish a liquor agency in his store to provide visitors to Canada with an opportunity to purchase liquor before 10:00 a.m. and after 6:00 p.m. when the Board liquor store is closed.

The Board liquor store is about six miles from the airport. However, in this case the complainant said that time and not distance is the significant factor that the Board ought to have considered. Many United States visitors fly into the airport before 10:00 a.m. and after 6:00 p.m. The airport manager advised our Office that during 1978, 596 American aircraft landed at that airport during these times, with an average of 4 to 5 persons per aircraft. These were flights in which travellers had to make connections with Canadian aircraft for points further north. Thus, they could not make liquor purchases. The

Ombudsman noted that these travellers may bring liquor into Canada with them, but are restricted to 40 ounces of liquor or wine per person duty free.

Our investigation revealed that the complainant's M.P.P. wrote to the then Minister of Consumer and Commercial Relations requesting that the Board give consideration to the complainant's request for a liquor agency, as he believed that the service was needed and would be an asset to the tourist trade. As well, an official and a Minister of another Ontario governmental organization and the local Chamber of Commerce requested that the Board give consideration to the complainant's submission. The local Town Council also indicated its approval of an agency store at the airport.

During the course of the investigation, the Ombudsman formed the view that it might be open to him to conclude that it was "unreasonable" for the Board to have denied the complainant a liquor agency at his store. Accordingly, he reported his possible conclusion to the Chairman of the Liquor Control Board of Ontario together with his possible recommendation. Since the Board might have been "adversely affected" by his tentative conclusion and recommendation, the Ombudsman accorded to the Board the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of the Ombudsman Act.

Representations were received on behalf of the Board by letter in which the Board counsel requested a personal meeting with the Ombudsman. A meeting was held, and the Board presented further representations in writing. In short, the Board could not agree that it had been unreasonable in this matter, and noted that a very bad precedent might be established if the Ombudsman were to proceed with his possible conclusion and recommendation.

The Ombudsman carefully considered the representations of the Board in the light of the investigation conducted and noted the following.

While the Board was satisfied with the location of a conventional liquor store in the town, six miles from the airport, the Ombudsman was of the view that, in this case, time and not distance was the problem. The Board has a policy which allows only duty free liquor stores at airports, and liquor agencies on or north of Highway 17. However, there are, in fact, five such agency stores located south of Highway 17.

The Ombudsman was also aware that the Board's objective in establishing agency stores is to provide the purchasing public with the best service commensurate with sound business practices, and to earn revenue for the government. These stores are established in remote areas of northern Ontario and must be sufficiently remote from any existing liquor store or agency.

The Ombudsman noted that the Board's definition of "sufficiently remote" is generally a distance of 25 miles on main highways and secondary roads. This mileage figure may be reduced by the Board if adequate service cannot be provided to a community due to inaccessibility, or, if the Board does not intend to establish a conventional liquor store in the locality. It was brought to the Ombudsman's attention that the Board has established a liquor store in another area of northern Ontario, to serve the liquor requirements of summer tourists and sport fishermen. Furthermore, the residents of that community can make liquor purchases throughout the fall, winter and spring from an agency store which is approximately ten miles from a Board liquor store in a nearby town.

Notwithstanding the above, the Board decided that the complainant's proposal for an agency store in the airport failed to meet the requirements of a remote location, and conflicted with the Board's policy regarding liquor outlets in airports. The Board considered "time" as opposed to "geography" to be a concept which it could not accept.

With the above in mind, the Ombudsman concluded that the complainant was attempting to provide a desired service for tourists flying into the airport. Since the airport survey revealed that a considerable number of American tourists landed at this airport and made connecting flights before and after the hours kept by the liquor store nearby, it was felt that these people were prevented from making a purchase of Canadian liquor. They were, in fact, remote from a conventional liquor outlet. The complainant was aware of the requirements of the Board regarding agency stores and was prepared to comply with them. Accordingly, the Ombudsman concluded pursuant to section 22(1)(b) of the Ombudsman Act, that the Board's denial of a liquor agency authorization to the complainant was unreasonable.

The Ombudsman recommended pursuant to section 22(3)(c) of the Ombudsman Act that the Board allow the complainant to sell liquor at his store under the authority of an agency licence to bona fide tourists, the outlet to be operated during appropriate hours when the local liquor store is closed.

The Ombudsman's report setting out his conclusion and recommendation was forwarded to the Chairman of the Liquor Control Board of Ontario and to the Minister of Consumer and Commercial Relations. Subsequently, the Deputy Minister of Consumer and Commercial Relations advised the Ombudsman that the Minister had referred this matter to Cabinet for its consideration. The Deputy Minister added that Cabinet had decided to uphold the decision of the Board.

The Ombudsman then wrote to the Premier in accordance with the provisions of the Ombudsman Act, and reported the results of his investigation to the complainant. Our file was then closed. The Premier's response did not indicate that any steps would be taken to implement the recommendation.

MINISTRY OF
THE ENVIRONMENT

DETAILED SUMMARY NO. 5

This complaint was brought to this Office on November 20, 1979, by an unincorporated group acting on behalf of the citizens of an unorganized community. The primary complaint of the citizens was that the community's water supply system was badly in need of repair, and that although the Ministries of Northern Affairs and the Environment had agreed to fund emergency repairs to ensure the community a water supply through the winter, these repairs were not being carried out.

Informal contacts with the Ministries indicated that the works were proceeding although there had been some delay. It appeared, therefore, that this complaint might be premature and the complainant was so advised in a letter of January 17, 1980. In a letter dated January 30, 1980, the complainant advised that the works had not yet commenced and asked that this matter be investigated.

The Ombudsman advised the Minister of the Environment and the Deputy Minister of Northern Affairs of his intention to investigate this complaint in letters dated February 12, 1980. Separate responses were forwarded by both Ministries.

After contacting the complainant's spokesperson by telephone and after receiving permission from each of the Ministries to release copies of their letters to the complainant, copies of the Ministries' responses were forwarded to the complainant on April 11, 1980 for its consideration. The complainant organization responded to the Ministries' positions by letter dated May 15, 1980.

The file was then assigned for investigation. The spokesperson for the complainant organization was contacted on June 24 and July 4, 1980, at which time the investigator was advised that an additional complaint would be filed by the complainant and that additional documentation would be forthcoming. Subsequently, on July 29, 1980, the investigator was advised that a meeting had been arranged between the complainant and Ministry representatives. After confirming this meeting with Ministry officials, it appeared that the meeting might well lead to a resolution of the complaint. It was decided, therefore, not to commence the investigation of this complaint until after this meeting was held. The meeting was originally scheduled for August 14, 1980, and subsequently postponed to August 28, 1980.

Since the meeting failed to resolve the complainant's concerns, the investigator attended at the local Ministry

offices on September 2, 1980, to review its files as they related to the complaint, and on September 3, 1980, met with the complainant's representatives in the community.

The investigation revealed that the community had experienced problems with its water supply system for some years. Improvements had been made to the water supply system in the winter of 1979/80 but these had done little to ensure either the capability of the system to deliver water or the potability of the water delivered.

The Ministry of Northern Affairs took the view that the money it had budgeted for improvements to the system was intended for emergency repairs to get the citizens through the winter only and, as the winter had passed without incident, its commitment had been met. The Ministry of the Environment said that it did have funds available for the improvement of the water supply system, but in the absence of any public authority to take charge of these funds and of the improvements, it was unable to spend this money. It was also revealed that the legal title to the waterworks was vested in a private corporation.

It was then determined that the local school board might have both the legal authority and the legal capacity to take ownership of the water supply system and to receive funds from the Ministry of the Environment for the improvement of the system.

The investigator thereupon contacted representatives of the Ministry of the Environment, the Ministry of Northern Affairs, the Ministry of Education, the owners of the waterworks and the complainant. It was agreed that this was a possible avenue for the resolution of the problem and the complainant was advised, in a telephone conversation on December 11, 1980, to make the necessary formal approaches to the local school board and then to the Ministry of the Environment.

The investigator was advised, by way of a telephone conversation on January 7, 1981, that discussions had in fact begun. However, subsequent contacts on February 27, 1981, revealed that no action had been taken by the complainant in accordance with the procedures previously agreed upon. As a result of this contact, the complainant did make an approach to the local school board concerning this matter. The school board, however, tabled a motion on this question pending an Ontario Municipal Board hearing on a petition brought by the residents of the community for the creation of a Local Improvement District.

That hearing was held on April 14 and 15, 1981, and the decision was issued on June 22, 1981, denying the petition.

Following this decision, the complainant organization decided to dissolve itself, its members being of the opinion that the organization could accomplish nothing further for the community. The complainant's spokesperson was advised that if individuals wished to have this Office continue its involvement in this matter, then they should consider making complaints on their own behalf. No such complaints were received.

The investigator was subsequently advised, on July 27, 1981, that application had been made for the formation of a Local Services Board. Such a board would have the authority to manage the waterworks and it was further determined that the Ministry of the Environment would be able to make capital grants to such a board.

The file on this matter was then closed as the complainant organization had, for all intents and purposes, abandoned the complaint and there appeared to be an imminent solution to the community's problems.

MINISTRY OF
HEALTH

DETAILED SUMMARY NO. 6

This complainant registered a complaint with the Office of the Ombudsman in October, 1979. She alleged that during her admission to an Ontario psychiatric hospital, staff members had lost two items of her personal clothing valued at \$102.00. The complainant contended that the hospital authorities should either locate and return her clothing or reimburse her.

Following our notice of intent to investigate, the hospital administrator provided pertinent data from administrative records and the Deputy Minister of Health responded by letter. The Ministry took the position that the hospital was not responsible for patients' personal belongings; patients were so advised upon admission to the hospital.

Our investigation revealed that members of the hospital staff had not followed the usual practice of listing clothing upon the complainant's admission to the hospital. Numerous items of her clothing had been sent to another area of the hospital to be marked with her name. This was done four days after the complainant's admission to the hospital and her clothing was not immediately returned to her. The hospital records indicated that after the complainant twice expressed concern to staff members over the whereabouts of her clothing, all clothing was located and returned to her except for one item. The complainant remained in the hospital twenty-one days and, apart from an initial three-day period under close observation, she was permitted to come and go from the hospital and take weekend leave. After her discharge date, the complainant had telephoned the hospital seeking the one item of her clothing that had not been returned to her, or reimbursement if the clothing had been lost. However, the hospital would not assume responsibility for her personal clothing.

Legal research undertaken by our Office revealed that the practice at the hospital, not to assume responsibility for patients' personal belongings, appeared to be contrary to law. The Ombudsman, therefore, formed the view that it was open to him to conclude that the practice appeared to be contrary to law, and that the decision made in the complainant's case, based on this practice, was unjust. He also formed the view that it was open to him to recommend: 1) that the practice of not assuming responsibility for patients' personal belongings, left in the hospital's care, should be altered to acknowledge that in circumstances where other organizations or persons would have

bailee responsibilities, the hospital was likewise responsible; and 2) that the decision not to reimburse the complainant be varied to give her compensation in the amount of \$85.00 - the estimated value of the clothing item she claimed to have lost during her admission to the hospital (our investigation revealed no evidence to support that two clothing items had been lost).

Since it seemed to the Ombudsman that the Ministry and the hospital might be "adversely affected" by his tentative conclusions and recommendations, he accorded to the Deputy Minister of Health and the hospital administrator, pursuant to section 19(3) of the Ombudsman Act, the opportunity to make representations respecting his possible adverse report.

The Deputy Minister responded by letter, stating that the complainant would be compensated. The Deputy Minister also advised that hospital staff members were examining record-keeping procedures and revisions would be instituted, as warranted, to ensure utmost control of patients' clothing.

The Ombudsman carefully considered the representations of the Ministry of Health in light of the investigation conducted. He issued a report concluding: 1) pursuant to section 22(1)(a) of the Ombudsman Act, that the practice established at the hospital, not to assume responsibility for patients' personal belongings, was contrary to law; and 2) pursuant to section 22(1)(b) of the Ombudsman Act, that the decision made in the complainant's case, based on the aforementioned practice, was unjust. The Ombudsman did not find it necessary to make a recommendation as the Ministry had taken what he considered to be appropriate action in order to resolve this complaint.

The outcome was reported to the complainant and our file on the matter was closed on July 13, 1981.

DETAILED SUMMARY NO. 7

This complainant wrote to the Ombudsman on March 5, 1981, concerning a decision rendered by the Ontario Health Insurance Plan (OHIP).

The complainant had been undergoing intensive psychotherapy in the United States for approximately two months prior to January, 1981, as there was no psychotherapist in the place of her residence able to accommodate her need for two sessions per week. OHIP reimbursed her accordingly for these sessions. However, in January, 1981, the bus

employees in her area went on strike, and she was unable to travel to her appointments. Her doctor determined that because of her condition it would be necessary to conduct the psychotherapy sessions by telephone. Approximately one and a half months later she was advised that OHIP did not cover "advice" given by telephone, despite the fact that the sessions were of fifty minutes duration. She, therefore, had to discontinue sessions with her psychotherapist for a period of about two months until the buses were running again, at which time she was able to resume her psychotherapy sessions. The complainant contended that OHIP acted unreasonably in its decision to deny her coverage for the twice weekly telephone sessions with her psychotherapist during a period when she was unable to obtain her own transportation to and from the United States and her doctor had determined the telephone sessions were necessary. Approximately \$600.00 was the amount in question.

The Ombudsman notified OHIP of his intention to investigate this complaint and requested a statement of OHIP's position. The General Manager of OHIP replied that under section 49(1)(4) of Ontario Regulation 323/72 under the Health Insurance Act, advice by telephone was specifically excluded from coverage by the Ontario Health Insurance Plan. The question which concerned the Ombudsman was whether or not "advice by telephone" in the context of section 49 included psychotherapy conducted by telephone.

During the course of our investigation, our Office obtained two opinions on this matter from medical experts in the field of psychiatry. Both doctors advised that it was their opinion, within the context of this particular case, that the psychotherapy sessions should not have been considered to be advice, but rather treatment. Our Office then wrote to OHIP apprising it of the two opinions we had obtained in order to permit a review of the complainant's claim. We gave our assurance that no opinion had been formed at that time by the Ombudsman or by any member of his staff with respect to the merits of the complainant's contentions.

Subsequently, we received a response from the General Manager of OHIP indicating that in light of the doctors' advice and within the context of this particular case, he agreed that the telephone sessions should not have been excluded by section 49(1)(4) of Ontario Regulation 323/72 and approved payment for the psychotherapy the complainant received over the telephone.

As the complaint was resolved to the satisfaction of the complainant, the Ombudsman terminated his investigation and the file on the matter was closed on November 4, 1981.

DETAILED SUMMARY NO. 8

This complainant telephoned our Office on March 31, 1981 with a complaint relating to the Ontario Health Insurance Plan (OHIP). On the same date her M.P.P. forwarded documentation on the complaint to our Office.

In November, 1980, the complainant contacted her local OHIP office to request information about OHIP's policy for reimbursement of claims originating from the United States. The complainant was advised to obtain documentation from her family physician concerning the procedure to be performed. This documentation was subsequently submitted to OHIP. By letter dated December 22, 1980, the complainant's family physician was advised that insured hospital services would be reimbursed at 75% of the costs for standard ward accommodation. The letter went on to indicate that reimbursement for medical fees would be as listed in the Schedule of Benefits.

Upon receipt of the information, the complainant called the OHIP district office to indicate that she had been advised by a number of physicians that the procedure she needed was not available in Ontario. She inquired whether or not this fact would affect the amount of reimbursement.

On January 28, 1981, the complainant's M.P.P. wrote to the Minister of Health requesting his personal review of the situation. The matter was referred to the General Manager, OHIP, for investigation. He consulted with the Ontario Medical Association (OMA).

On April 3, 1981, the Chairman of the Orthopaedic Section of the OMA concluded that the procedure could be performed in Ontario. The complainant was subsequently advised of the names of three Ontario orthopaedic surgeons who, in the opinion of the OMA, could perform the procedure. A representative of the OMA indicated that he would arrange an appointment for the complainant with her choice of the three surgeons. On April 6, 1981, our Office was advised by the complainant that the doctor of choice indicated that he would only be prepared to accept a referral from the complainant's family physician. This referral was subsequently made. On April 15, 1981, the complainant was advised by the doctor of choice that it was doubtful

an appointment could be scheduled prior to April 22, 1981, the day the complainant was to travel to the United States for the procedure to be performed there on April 27, 1981. The complainant was advised by the American surgeon that if she cancelled the appointment, she would not be able to arrange a new date for surgery for several months. The complainant was unable to walk unassisted and was in severe pain.

The Ombudsman informed the Deputy Minister of Health of his intention to investigate the complainant's contention that in view of her protracted communications with OHIP, and her inability to obtain a consultation with an Ontario surgeon able to perform the procedure before April 27, 1981, it was unreasonable for OHIP to refuse to pay 100% of her hospital costs, and an amount for her surgical costs equivalent to the average amount paid for the procedure in the area in question.

The Ministry's position, as stated by the Deputy Minister, was that the procedure was available in Ontario, and, therefore, reimbursement would be as previously stated to the complainant.

On April 22, 1981, the complainant left for the United States having been unable to obtain an appointment with the Ontario surgeon. On April 27, 1981, our Office received a telephone call from the Ontario surgeon's office advising that an appointment would be available for the complainant. The doctor's secretary confirmed that this was the first time the complainant would have been given a definite appointment.

With the complainant's permission, we wrote to the American surgeon and asked for his comments on OHIP's opinion that the complainant had elected to go to the United States for a non-emergency procedure which was available in Ontario. In his response, the surgeon advised, in part, that "her surgery was not elective in a very important sense that had she lost just a small amount of additional bone, reconstruction would have been impossible. ...It is my belief that it was necessary to have this complex surgery done in (the United States)".

The documentation provided by the surgeon, including the operative report, was forwarded to the General Manager of OHIP. The General Manager agreed to readjudicate the claim.

On October 30, 1981, a representative of the General Manager's office advised our Office of the results of the readjudication. The operative report had been submitted

to the OMA where it was reviewed by two orthopaedic surgeons. Both surgeons, while noting the complexity of the operation, stated that there were several surgeons in Ontario with the expertise and experience necessary to perform the procedure. OHIP, therefore, decided that the professional fees would be paid according to the Schedule of Benefits and that, in its view, this was a non-appealable decision. However, OHIP said that it would be open to the complainant to appeal its decision with respect to hospital costs to the Health Services Appeal Board (HSAB).

On November 12, 1981, we received a copy of the complainant's letter to the Health Services Appeal Board serving notice of her intention to appeal the General Manager's decision with respect to costs (both medical and hospital) arising out of the surgery she had received in the United States. We were subsequently advised that in the General Manager's opinion the complainant was not entitled to appeal her claim with respect to medical costs, as he did not reduce the claim "to an amount less than the amount payable by the Plan", as referred to in section 24(1)(c) [now section 26(1)(c)] of the Health Insurance Act; OHIP would, therefore, argue before the HSAB that it had no jurisdiction to hear this appeal.

During a telephone conversation on November 26, 1981, and by letter dated January 13, 1982, the complainant was advised that we would not be proceeding further with our investigation into her complaint as there was now an appeal available to her. We also notified the complainant's former M.P.P., and her present M.P.P., of our findings. Our file was then closed as the complaint was premature.

On February 17, 1982, the complainant's appeal was heard by the HSAB. The Board found that the complainant's situation had been one of extreme urgency and that under the circumstances she had no alternative but to have the operation performed by the American surgeon. Pursuant to section 25(1) [now section 27(1)] of the Health Insurance Act, the HSAB substituted its opinion for that of the General Manager and allowed the hospital claim at 100%. The Board further determined that claims for physiotherapy and radiology treatments should also be paid at 100%. Accordingly, it determined that the complainant would be reimbursed an additional \$8,053.72 U.S.

With respect to medical costs, the HSAB found that:

The OHIP Schedule of Benefits of April 1, 1981 which set forth the relevant fee schedule established the fee payable for this type of operation, and

evidence adduced indicated that the Tariff Committee was cognizant of the (American surgeon's) technique in setting the fee.

The Board is bound by the tariff and cannot vary it. Accordingly, the General Manager's decision with respect to the physician's services...will be upheld.

We later learned that the complainant's solicitor issued a notice of appeal of the HSAB decision to the Divisional Court.

MINISTRY OF HEALTH

RECOMMENDATIONS DENIED

DETAILED SUMMARY NO. 9

The complainant contended that a decision of the General Manager of the Ontario Health Insurance Plan (OHIP) was unreasonable.

The complainant had undergone extensive dental surgery following surgical removal of a cancerous growth on her face. The surgery was performed by the Chief of the Department of Dentistry of an eastern Ontario hospital. When the complainant submitted a claim for reimbursement of the balance of the medical and laboratory charges not covered by a private insurance company, her claim was refused by the General Manager on the grounds that the services provided were not insured benefits. The complainant subsequently learned that if the dental surgery had been performed by a physician, the services would have been benefits under OHIP, but, because they were performed by an oral surgeon, they were not. It was the complainant's view that this was an unreasonable distinction.

The complainant contended that few residents of Ontario would have had sufficient knowledge of OHIP regulations to ensure that such work was performed by a physician. The complainant advised our Office that "I also doubt that when one is faced with the loss of an eye and the structure of one side of the face, they can be expected to turn their minds to rules and regulations which are not even readily accessible." The complainant further contended that it was unreasonable to deny her reimbursement because the work was performed by an oral surgeon, when the work was necessitated by an operation performed by a medical surgeon.

The Ombudsman wrote to the then Deputy Minister of the Ministry of Health to advise him of his intention to investigate this complaint. The Deputy Minister's response indicated that dental benefits were restricted to a specific list of procedures spelled out in section 43 of Regulation 323/72 (now section 46 of Regulation 452) under the Health Insurance Act. The services performed on the complainant were not included in the list of procedures and, therefore, were not benefits of the Plan. The reply further suggested that although it might be true that the complainant was not aware that the services were not benefits of OHIP, certainly the oral surgeon could have informed her.

In the course of our investigation we spoke with the former General Manager of OHIP. He emphasized that he did not have any discretion under the the Health Insurance Act to make payment in a case such as this and confirmed that

if the same surgery had been performed by a physician, it would have been a benefit of OHIP.

During the course of the investigation, it appeared to the Ombudsman that it might be open to him to conclude that the Ministry's decision not to pay this claim was, in the words of section 22(1)(b) of the Ombudsman Act, "in accordance with a rule of law or a provision of any Act" that is or may be "unreasonable" or "improperly discriminatory". The complainant's surgery was necessitated by earlier surgery to remove a tumor, and was an unusual dental surgical procedure which would have been an insured service had the surgery been performed by a plastic surgeon rather than an oral surgeon. The Ombudsman was of the opinion that the complainant acted in a reasonable manner by engaging the oral surgeon recommended to her by her first surgeon, and further noted that the complainant was not aware at the time of the operation that OHIP would not pay for surgery performed by an oral surgeon.

The Ombudsman tentatively recommended that OHIP pay the claim submitted by the complainant either by implementing an amendment to section 43 of Ontario Regulation 323/72 under the Health Insurance Act, or by passing a special bill. The amendment could provide a review of each case on its merits, with coverage for cases in which medical services were performed by an oral surgeon on the referral of a physician.

The Ombudsman reported his tentative conclusion and recommendation to the Deputy Minister as required by section 19(3) of the Ombudsman Act.

Representations received from the then Deputy Minister of Health, which indicated that the Ministry could not agree that the regulation should be amended, were given careful consideration by the Ombudsman. He remained of the view that the Ministry's decision not to pay this claim was in accordance with a regulation that is "unreasonable" and "improperly discriminatory". Accordingly, the Ombudsman recommended that the Ministry of Health pay the complainant's claim, either by means of a special bill or by an amendment to section 43 of Ontario Regulation 323/72 pursuant to the the Health Insurance Act.

The Deputy Minister's response to the recommendation stated in part:

If these medical procedures, namely the flushing and debridement of the wound, had been performed by a physician, a

claim to OHIP would have been appropriate. Depending on the nature of the precise service performed, the benefit payable would vary but would still be considerably below the amount billed by (the oral surgeon).

After receiving this response, the Ombudsman consulted a past Chairman, Plastic Surgery Section of the Ontario Medical Association (OMA). After ascertaining that, in the past Chairman's view, the operation would normally have been performed by a plastic surgeon in company with an ear, nose and throat specialist, the Ombudsman requested from him his analysis of the treatment provided for the complainant. The Ombudsman specifically asked which services would in his view have been covered by OHIP, had the treatment been performed by a plastic surgeon.

The past Chairman stated to the Ombudsman that, on the basis of the information provided, it was his opinion that OHIP would not ordinarily cover the cost of the prosthetic device, the insertion or cleaning of that device. He stated, however, that surgical release of adhesions and relief of adhesions of trismus, if performed in a hospital setting, were services for which the patient could reasonably expect coverage had the procedure been performed by a plastic surgeon.

The Ombudsman considered this additional information and advised the former Deputy Minister of Health by letter dated March 25, 1980, that he wished to revise his conclusion and recommendations. He noted that the recommendations were being made after taking into account the principle contained in the recommendation made by the Select Committee on the Ombudsman in its Seventh Report to the Legislature which stated:

...The Committee...recommends to the Legislature for approval and adoption that the Ministry of Health cause an amendment to be made to the Health Insurance Act, providing that:

Where the amount payable by the Plan for an insured service rendered by a physician is not prescribed by the Regulations, it is the function of the General Manager and he has the power to determine the amount.

The Ombudsman recommended, pursuant to section 22(3) (e) of the Ombudsman Act, that the Ministry of Health pay that portion of the complainant's claim which would have been an insured benefit had the operation been performed by a plastic surgeon. He also recommended that section 43 of Regulation 323/72 of the Health Insurance Act, be amended to permit the General Manager to determine the amount of payment for exceptional cases where medical procedures are performed by persons in possession of the necessary hospital privileges who are not physicians.

The Deputy Minister of Health responded on October 16, 1980, rejecting the conclusion and recommendations for the reasons previously put forth by the Ministry.

Pursuant to section 22(4) of the Ombudsman Act, a copy of the Ombudsman's report and recommendations was forwarded to the Premier. The Ombudsman reported the results of his investigation to the complainant and the file was closed.

DETAILED SUMMARY NO. 10

This complainant telephoned our Office complaining that a decision of the General Manager of the Ontario Health Insurance Plan (OHIP) was unreasonable.

In 1968, surgery to remove a growth on the complainant's jaw was performed by an ear, nose and throat specialist. Ten years later, the tumor reappeared and it was recommended to the complainant by two doctors that the growth be removed by a third doctor. The operation involved an extensive surgical excision and immediate reconstruction of the jaw area. When a bill was submitted to OHIP by the surgeon, OHIP agreed only to pay for the removal of the tumor as the surgeon was an oral surgeon. Both the complainant and her oral surgeon were of the opinion that the surgery was unusual and should have been given independent consideration by an OHIP referee. The oral surgeon was also of the opinion that the surgery could not be considered simply as dental work, and should, therefore, be a benefit under OHIP.

Following the General Manager's decision not to pay the claim in full, the oral surgeon wrote to an OHIP referee expressing his opinion why the complainant's claim should be paid. The OHIP referee advised he was aware "that the OHIP list of procedures and the fees for same are inadequate". The referee went on to indicate that the above notwithstanding, he did "not have the authority to approve fees for services which are included in the Act

and Regulations which pertain to the Ontario Health Insurance Plan".

The Ombudsman informed the then Deputy Minister of Health of his intention to investigate this complaint. In its response, the Ministry took the position that at the time of the complainant's surgery it was limited to providing payment for the dental procedures specified in section 43 of Regulation 323/72 (now section 46 of Regulation 452) under the Health Insurance Act; that the only dental procedure performed which was listed in the Schedule of Benefits was the tumor excision; and that there was no provision for pre- or post-operative dental care, or for independent consideration of the claim.

Our investigation revealed that the oral surgeon had been granted operating privileges by the Chief of Staff at the central Ontario hospital. At the time of the operation, the complainant was unaware that the services to be performed by the oral surgeon were, in part, not insured services.

During the course of the investigation, it appeared to the Ombudsman that it might be open to him to conclude that the Ministry's decision not to pay appropriate parts of this claim was, in the words of section 22(1)(b) of the Ombudsman Act, "in accordance with a rule of law or provision of any Act...that is, or may be unreasonable...or improperly discriminatory". The complainant's surgery was necessitated by the re-emergence of an earlier tumor; it was an unusual dental surgical procedure; the claim would have been paid in part if the surgery had been performed by a physician; the oral surgeon had been granted operating privileges by the Chief of Staff of the central Ontario hospital; the complainant was not aware at the time of the surgery that OHIP would not pay for the operation if it were performed by an oral surgeon; and the Ombudsman was of the tentative opinion that the complainant acted in a reasonable manner by engaging the recommended oral surgeon.

In light of his possible conclusion, it appeared open to the Ombudsman to recommend tentatively, pursuant to section 22(3)(e) of the Ombudsman Act, that the Ministry of Health pay that portion of the complainant's claim which would have been an insured benefit had the operation been performed by a physician. He further recommended tentatively that section 43 of Regulation 323/72 of the Health Insurance Act be amended to permit the General Manager to determine the amount of payment for exceptional cases where medical procedures are performed by persons in possession of the necessary hospital privileges who are

not physicians. As required by section 19(3) of the Ombudsman Act, he reported his tentative conclusion and recommendation to the Deputy Minister on January 13, 1981.

Representations were received in writing on behalf of the Ministry. In short, the Ministry could not agree that the regulations should be amended to provide coverage for cases such as the complainant's and advised that there were no plans to amend the Act. These representations were given careful consideration by the Ombudsman. The Ombudsman also considered the position of the Ministry on an earlier complaint dealing with the same basic facts (see Detailed Summary No. 9), and the response of the Ministry to the following recommendation contained in the Seventh Report of the Select Committee on the Ombudsman:

...The Committee...recommends to the Legislature for approval and adoption that the Ministry of Health cause an amendment to be made to the Health Insurance Act providing that:

Where the amount payable by the Plan for an insured service rendered by a physician is not prescribed by the Regulations, it is the function of the General Manager and he has the power to determine the amount.

(p.62)

The General Manager of OHIP expressed the Ministry of Health's concerns with the recommendation and agreed instead to include "Code R990" (now Code R991) in the OHIP Schedule of Benefits. Under this code, independent consideration will be given "to claims that are unusual but generally accepted surgical procedures which are not listed specifically in the Schedule".

As it appeared that Code R990 (now R991) would not apply to the services rendered to the complainant by a dentist, as insured services performed by a dentist are restricted to those specified in the regulation, the Ombudsman remained of the view that the Ministry's decision, not to pay an appropriate part of the claim, was "in accordance with a rule of law or a provision of any Act... that is or may be unreasonable...or improperly discriminatory".

Therefore, on May 5, 1981, the Ombudsman recommended, pursuant to section 22(3)(e) of the Ombudsman Act, that

the Ministry of Health pay that portion of the complainant's claim which would have been an insured service had the operation been performed by a physician. The Ombudsman also recommended that section 43 of Regulation 323/72 of the Health Insurance Act be amended to permit the General Manager to determine the amount of payment for exceptional cases where medical procedures are performed by persons in possession of the necessary hospital privileges who are not physicians.

The Deputy Minister responded to the Ombudsman's report by letter dated September 23, 1981, and stated in part:

It is very important to recognize that our program in respect of dentists' services differs fundamentally in purpose, scope and character from the hospital and medical care programs; it was never intended to do more than assist residents of Ontario in meeting a very limited part of the cost of dentists' services.

He also stated that the provisions for insured dental services in the regulations were decided upon "after consultation with the profession". The Deputy Minister further advised that, in his view, it would not be appropriate for officials of OHIP to have "discretionary authority" in the administration of the Plan, as this discretion could "introduce the possibility of decisions which could well be arbitrary, unfair or discriminatory and in addition could produce financial impacts which would be totally unacceptable to the Government".

After consideration of all the facts, the Ombudsman forwarded a copy of his report and recommendations to the Premier pursuant to section 22(4) of the Ombudsman Act. The Ombudsman reported the results of the investigation to the complainant and the file was closed.

DETAILED SUMMARY NO. 11

The complainant wrote to the Ombudsman with a complaint concerning a decision of the Board of Directors of Chiropractic denying him an opportunity to write the Ontario Chiropractic Licensing Examination.

The complainant was enrolled in a 40-month course of continuous instruction at a college of chiropractic in the United States. In order to qualify to write the Ontario

Chiropractic Licensing Examination, the Board insisted that he comply with section 25(2) of Regulation 228 (now section 26(2) of Regulation 248) made under the Drugless Practitioners Act which states, in part, that "the course in chiropractic shall include not less than four academic years of nine months each with at least 4,200 hours of instruction...". The Board interpreted the section so as to require that the complainant take three-month vacations between each of his nine-month academic sessions.

The complainant contended that this was unreasonable, and stated that it would be financially oppressive to extend his education while residing in the United States. Further, he stated that by taking 40 months of continuous instruction, he was actually exceeding the 36 months prescribed by the regulation. The complainant felt that if he completed the required hours of instruction, and if he satisfactorily passed all his subjects, it should not matter at what pace he did so.

The Board was informed of our intention to investigate this complaint and two of our investigators met with an official of the Board to discuss the matter further and to obtain relevant documentation.

We learned that the Board had defined "academic year", the term used in the regulation, to mean the months of September to May, inclusive. It had concluded from this that in order to comply with the regulation, and hence to qualify to write the Ontario Chiropractic Licensing Examination, a candidate must show a period of 45 months between matriculation and graduation, including nine months of vacation.

The Board was not able to provide any documented policy reasons which would support its interpretation of the regulation. A review of minutes of past meetings of the Board, dating back to 1937 when the regulation was passed, did not reveal any further information in this regard.

A representative of the Board stated that the Board would not support changing the wording of the regulation as such a change would not make an improvement to the quality of chiropractic care. He suggested that students require three-month vacations so that they can be receptive to the following academic session. However, he could not provide any evidence to suggest that students completing an accelerated course of study were less academically prepared or that their work was inferior to students taking a program which included vacation periods. The representative also stated that universities schedule their

course programs to include nine months of academic study, alternating with three-month vacations and, therefore, students of chiropractic should follow this schedule.

Our investigation revealed that it was not uncommon for universities to offer courses during the summer which would enable a student to complete a four-year program in less than four years. We also learned that most of the chiropractic colleges in North America have been offering a 36-month full-time in-residence chiropractic professional curriculum in an accelerated fashion for nearly 40 years, so that the entire program can be completed within 36 consecutive calendar months.

It appeared to the Ombudsman that nothing in section 26(2) of Regulation 248 would seem to require that "academic year" be restricted to mean a September to May academic year. He formed the opinion that provided a student's program consisted of at least four units of nine months each and at least 4,200 hours of instruction, the regulation appeared to be satisfied. The Ombudsman, therefore, came to the possible conclusion that the Board was unreasonable in denying the complainant an opportunity to write the Ontario Chiropractic Licensing Examination. Accordingly, the Board was advised of the possible conclusion and the possible recommendation that the Board alter its interpretation of the regulation, pursuant to section 19(3) of the Ombudsman Act.

Representations were received on behalf of the Board. The Board could not agree that its interpretation of the regulation was unreasonable and, therefore, would not allow the complainant an opportunity to write the Ontario Chiropractic Licensing Examination. The Board maintained that it had consistently interpreted the regulation to mean four academic sessions of nine months in each of four calendar years. However, a representative of the Board agreed that it was possible to question whether the regulation intended "academic year" to be qualified by "calendar year".

Representatives of the Board stated that the Board's interpretation of the regulation had traditionally served Ontario well and was in line with other health disciplines. Our investigation, however, revealed that other health disciplines are administered differently in that academic standards are determined independently by each of the educational institutions offering health discipline courses. Provided a student meets the academic standards of the institution in which he or she is enrolled, it is open to that student to write the applicable licensing examination.

The Board also maintained that its interpretation of the regulation allowed the Board to control the quality of Ontario chiropractors. Nevertheless, the Board did not provide evidence that students completing an accelerated course of study were less academically prepared than students complying with the regulation.

Further, the Board expressed concern that if its interpretation of the regulation were opened up, it might make the Board's task of administering the legislation more difficult.

Lastly, the Board stated that its interpretation of the regulation limited the number of chiropractic students leaving Ontario to attend schools in the United States and also limited the influx of practitioners from the United States. The Ombudsman concluded, however, that the regulation was not intended for these purposes and it was, therefore, not reasonable for the Board to apply it in order to achieve them.

Additional investigation was conducted in order to determine what course requirements are necessary to write chiropractic licensing examinations in other Canadian provinces. Representatives of provincial chiropractic associations were contacted in each province, with the exception of Newfoundland. It appeared that Ontario is the only province which strictly requires students to complete a course of study which includes four years of nine months each. We found that British Columbia and Quebec, the only other provinces which have similar requirements, are willing to make exceptions by allowing students who have completed an accelerated course to write the provincial examinations.

After reviewing the representations made by the Board and the additional information obtained during the investigation, the Ombudsman determined, pursuant to section 22(1)(b) of the Ombudsman Act, that it was unreasonable of the Board to interpret section 26(2) of Regulation 248 to require that the four, nine-month academic sessions be separated by three-month vacations. Accordingly, he wrote to the Board recommending, pursuant to section 22(3)(c) and (d) of the Ombudsman Act, that the Board alter its practice of interpreting the regulation in this manner, and acknowledge that the complainant had satisfied the requirement of the regulation and is, therefore, eligible to write the Ontario Chiropractic Licensing Examination.

A reply was received from the Board indicating that it would not be implementing the Ombudsman's recommendation. As a result, the Ombudsman sent a copy of his report to

the Premier, pursuant to section 22(4) of the Ombudsman Act; the complainant and the Board were so advised. Our file was closed on April 6, 1981.

MINISTRY OF
HOUSING

DETAILED SUMMARY NO. 12

This complaint was brought to the attention of the Ombudsman by a letter from the complainant dated November 19, 1980.

The complainant stated that he had written to the Minister of Housing on August 14, 1980, stating his objections to a certain amendment to the Official Plan of his local municipality and requesting that the proposed amendment be referred to the Ontario Municipal Board for a hearing pursuant to what was then section 44(1) of the Planning Act. On September 4, 1980, the Minister wrote to the complainant stating that he would not refer the amendment and that, in his opinion, the request was made only for the purpose of delay.

The Ombudsman wrote to the Minister of Housing on February 25, 1981, advising the Minister of his intention to investigate this complaint. The Deputy Minister responded in a letter dated March 12, 1981, stating that the Minister had fully considered the complainant's concerns.

During the investigation, it was determined that the Official Plan amendment in question had been made by the municipal council at the request of a developer. The developer was engaged in the construction of a condominium building but had decided, after starting construction, to enclose the balconies with glass, thus increasing the floor space index on the building site beyond the ratio allowed by the Official Plan. The floor space index is a ratio of floor space to lot area. In the formula for calculating the floor space index, the floor space of open balconies is not counted but the floor space of enclosed balconies is.

The complainant noted that the Official Plan had only very recently been approved by the Minister; he was of the opinion that the amendment of the Official Plan so soon after its approval tended to reduce the value of the Official Plan as a planning guideline and was in itself a bad planning practice. The complainant argued that the hearing before the Ontario Municipal Board was the proper forum in which he could argue his contention and he felt that he had been unreasonably and arbitrarily denied the right to appear before the Board.

However, the complainant also stated that he did not object to the enclosure of the balconies. He pointed out that the developer had other options it could pursue to enclose the balconies and yet remain within the provisions of the unamended Official Plan.

During the investigation the Ministry put forth the position that the proposed amendment was a technical modification as most planning criteria, the number of living units in the project, the amount of traffic generated by the unit, the amount of services required by the building, and the size of the building itself, remained unchanged and within the allowances of the Official Plan. The only change authorized by the Official Plan amendment would be the enclosure of the balconies.

The complainant responded that the question of whether this amendment was merely "technical" or a departure from good planning principles ought to be determined by the Ontario Municipal Board and not by the Minister.

In considering this case, the Ombudsman determined that the substance of the complaint was that the Official Plan would be amended soon after it was approved. It was the complainant's contention that amendments generally should not be made at that time because the Official Plan should be allowed to "work" and that any amendments should be put off for some time, or in other words, delayed. The complainant did not object to the work which the amendment allowed. The Ombudsman, therefore, determined that the Minister had not come to an unreasonable conclusion in deciding that the complainant's request for a referral was "made only for the purpose of delay" and also that the Minister had not acted unreasonably in deciding not to refer the proposed Official Plan amendment to the Ontario Municipal Board.

The Ombudsman reported this decision to the complainant and the Minister on November 3, 1981. Accordingly, the file was closed.

DETAILED SUMMARY NO. 13

This was a complaint against a Housing Authority in northwestern Ontario and the Ontario Housing Corporation (OHC).

The complainants were both tenants in a senior citizens' building managed by the Housing Authority and subsidized by OHC. Prior to June 6, 1980, senior citizens who were tenants in OHC subsidized housing paid rent in an amount calculated solely on the basis of income. Those who earned \$6,700 or less per year paid annual rent equivalent to 20% of income. Those whose income exceeded \$6,700 paid annual rent of 20% of \$6,700 plus 25% of all income in excess of \$6,700.

On June 6, 1980, the Ontario Housing Corporation adopted a new policy whereby the value of a senior citizen's non-income-earning assets would also affect the amount of rent payable. Tenants continued to pay 20% of income up to \$6,700, and 25% of excess income. In addition, tenants were required to assess the value of all their non-income-earning assets and pay further rent at the rate of \$4.00 per month for each \$1,000 of assets owned in excess of \$5,000. In no case would rent exceed the fair market rental value of the premises.

Both complainants were owners of summer cottages. In August, 1980, the Housing Authority notified them that their rent would be increased in accordance with the new policy. They complained to my Office in October, 1981, that this decision was unreasonable.

After receiving the Chairman's statements in reply to our notice of intent to investigate these complaints, the files were assigned for investigation.

During the course of the investigation, OHC advised us that the new policy had been adopted as part of a scheme whereby senior citizens' housing was made available to a larger group of applicants than had previously been eligible. The Corporation had been aware for some time of a high demand for its housing among senior citizens of all incomes. Concurrently, in many areas of Ontario, there were subsidized senior citizens' apartments standing vacant because of a shortage of applicants whose incomes were low enough to qualify them for residence.

Under the new policy up to 15% of the units in any subsidized building were to be made available to applicants who would previously have been ineligible. The Corporation decided to charge rent in respect of non-income-earning assets for two reasons:

- 1) In fairness, those who were wealthy enough to own substantial amounts of these assets must be considered wealthy enough to pay higher rent, regardless of income.
- 2) The policy would prevent prospective tenants from "hiding" their wealth in non-income-earning assets. Although this had not been a problem in the past, it was perceived to be a potential source of abuse.

It was the Ombudsman's understanding at the time that a senior citizen who sold a non-income-earning asset would be deemed to earn income of 8% per annum on the proceeds of sale, which deemed income would be included with other income for the purpose of rent calculation.

The cottage owned by one of our complainants had an assessed value of \$30,000. The new policy caused a rent increase of \$100 per month if the cottage was not sold. If, however, it was sold, the deemed income resulting from the sale would cause an increase of only \$50 per month. Other hypothetical calculations showed that as the value of non-income-earning assets increased, the difference between rent payable if they were kept, as opposed to rent payable if they were sold, increased also.

At this stage of the investigation, the Ombudsman reached the tentative conclusion that, while it was reasonable to charge rent in respect of non-income-earning assets, it was unjust or improperly discriminatory to charge more rent to those who kept them than to those who sold them and earned income on the proceeds. His tentative recommendation was that a new policy be adopted whereby rent would be the same whether a tenant kept or sold his assets. He was also prepared to recommend that the rent policy be referred to a joint federal-provincial project on senior citizens' housing which was then under way. Since it seemed to the Ombudsman that the Housing Authority and the Corporation could be "adversely affected" by his possible conclusions and recommendations, he accorded to the Chairmen, pursuant to section 19(3) of the Ombudsman Act, the opportunity to make representations respecting his possible adverse report.

The Ombudsman received responses from both Chairmen. The Chairman of the Housing Authority advised him that he was bound to carry out Ontario Housing Corporation policy. The Ombudsman agreed that the Chairman was in no position to deviate from the policy.

The Chairman of the Corporation sent a lengthy response. He began by correcting a misconception on the Ombudsman's part. The Ombudsman was mistaken in believing that proceeds of sale of non-income-earning assets were automatically deemed to earn 8% income. The policy called for actual income earned to be used for rent calculation. Only where this could not be determined was the deemed income provision used. Assuming a rate of return on proceeds of sale of 14% (reasonable at current interest rates), it was then demonstrated that the difference in rent chargeable to our complainants was considerably less

than the Ombudsman had believed. Nevertheless, a difference was acknowledged to exist, which favoured those who sold their assets.

The Chairman stated the Corporation's justification, but after carefully considering his representations, the Ombudsman was not persuaded.

It was the Ombudsman's view that the effect of the policy was to encourage sales of non-income-earning assets. It was noted that the result of such sales would be an increase in income, thereby reducing the need to encroach on capital, so that the net effect may well have been the exact opposite of what the Corporation suggested.

The Ombudsman acknowledged that the difference at the time of the Chairman's response was relatively small, because of the high interest rates prevailing at the time. However, as interest rates drop, the difference in rent increases. Had interest rates continued to climb, on the other hand, the policy might have begun to operate so that higher rent was charged to those who sold their assets. The policy would then have encouraged the acquisition of non-income-earning assets.

On September 21, 1981, the Ombudsman issued his report on these complaints. He concluded, pursuant to section 22(1)(b) of the Ombudsman Act, that the policy "whereby a different rent increase [was] charged to the complainants ...when electing to retain non-income-earning assets from that which would [have been] charged should they elect to sell their non-income-earning assets" was improperly discriminatory. He recommended, pursuant to section 22(3), that the practice be changed so that a senior citizen's non-income-earning assets have imputed to them income equivalent to that which would be acceptable as a reasonable rate of return on conservative investments. In this way, rent payable would be the same whether a tenant kept or sold his non-income-earning assets. At the same time, wealth could not be "hidden" in such assets.

On December 15, 1981, the Chairman of the Corporation wrote to advise the Ombudsman that the policy had been changed. Non-income-earning assets were to have an imputed income attributed to them for rent calculation purposes. This figure was to be adjusted at the beginning of each year in accordance with the rate payable on the previous quarter's Canada Savings Bond issue.

As this resolution was satisfactory to both the Ombudsman and the complainants, our files on the matter were closed on February 26, 1982.

DETAILED SUMMARY NO. 14

This complaint, against the Ministry of Housing, was brought to this Office on February 8, 1979. The complainant, an employee of the Ministry, had been subjected to a pre-dismissal hearing pursuant to section 31 of Ontario Regulation 749 under the Public Service Act. The complainant contended that the Ministry's decision to proceed with the hearing was unreasonable and unfair in that it resulted from certain allegations made by a temporary clerk-typist, which constituted the sole evidence offered by the Ministry.

The Hearing Officer had found that there was insufficient evidence to merit disciplinary action against the complainant on all of the allegations. The complainant's solicitor made requests of the Ministry that it reimburse the complainant for his legal costs, which amounted to \$3,405.30. The Ministry rejected these requests. The complainant felt that, given the circumstances, it was unreasonable of the Ministry to have put him to the expense and humiliation of a hearing and to have refused to reimburse him for his legal costs.

The Ombudsman wrote to the Deputy Minister of Housing on March 7, 1979, and advised him of his intention to investigate this complaint. In response, the Deputy Minister stated that he followed what he believed to be the accepted practice of arranging for a hearing to be held under the Public Service Act in view of the serious allegations made by the clerk-typist. The Deputy Minister further stated that he believed that there was adequate justification for the hearing being ordered and that he would have been subject to more criticism had he not ordered a hearing to clear the matter up.

The Ministry's position with regard to the complainant's contention that he should be reimbursed for legal costs was that there was no practice or legal authority to allow a Deputy Minister to make such a payment.

The following facts were revealed by the investigation. On October 15, 1976, a clerk-typist who had been employed at the Branch for less than a month delivered a letter to the Deputy Minister of Housing in which she made allegations against certain members of the Branch, including the complainant, who she contended had entered in a conspiracy to discredit the Director of the Branch. In her letter, the clerk-typist named three other persons in addition to the complainant as being responsible for disrupting the normal operation of the Branch in an effort to discredit the Director.

On October 18, 1976, senior staff members of the Ministry of Housing met to discuss the various employee problems being encountered in this Branch. At that meeting, it was determined that any misconduct or failure to adhere to administrative procedures on the part of the complainant would be monitored and treated immediately by the Director with the appropriate progressive disciplinary action, either by verbal reprimands and written warnings to be followed by a decision to suspend or dismiss, depending on the circumstances. The complainant's work performance was to be closely monitored by the Director and a demotion or transfer was to be considered if it was determined that he was not meeting the requirements of his position. It was also decided to explore the possibility of a hearing to be conducted by the Deputy Minister or his designate in accordance with section 31 of Regulation 749 under the Public Service Act to investigate the charges contained in the clerk-typist's letter.

On October 27, 1976, the Deputy Minister replied to the clerk-typist requesting her co-operation in any investigation into matters that she had raised. The clerk-typist replied by letter on October 30, 1976 that she had no intention of being subjected to an investigation by Ministry staff.

On March 30, 1977, the Director of the Branch wrote a confidential memorandum to the Deputy Minister, enclosing a new letter from the clerk-typist to the Deputy Minister indicating that she was now willing to testify in the presence of her lawyer at a hearing into the allegations outlined in her letter of October 15, 1976. The Director requested that a hearing be conducted to look into the allegations made by the clerk-typist.

On May 24, 1977, the Deputy Minister appointed a Hearing Officer under section 23 of the Public Service Act. The Deputy Minister stated that the purpose of the hearing was to determine whether sufficient cause existed for the removal or dismissal of the complainant from employment by reason of his misconduct during the course of his employment.

A member of the Ministry's Legal Services Branch was appointed to represent the Ministry at the hearing and to compile the evidence to be presented by the Ministry.

On several occasions, the Ministry's solicitor advised the Ministry that there was no hard evidence to be offered in support of its allegations against the complainant and recommended that the hearing be cancelled. The only evidence at hand was the uncorroborated evidence of the

clerk-typist whose complaints concerned, in the solicitor's opinion, nothing more than "exaggerated office disagreements". She noted a lack of co-operation on the part of the Director of the Branch and the clerk-typist in her efforts to compile evidence against the complainant. She also raised the issue of unfairness, pointing out that although the clerk-typist's letter complained of the behaviour of at least four Branch employees, the Director requested pre-dismissal hearings for only two of them.

On August 16, 1977, the complainant was notified of the Ministry's intent to proceed against him by way of a hearing.

The hearing was held on March 13, 14 and 15, 1978. The clerk-typist was the Ministry's only witness and her testimony constituted the total evidence offered by the Ministry in support of its allegations against the complainant as outlined in the Notice of Hearing. The Hearing Officer found in favour of the complainant and stated that there was "insufficient evidence presented to justify disciplinary action against (the complainant) on all of the items listed in the Notice of Hearing." On May 31, 1978, the Deputy Minister of Housing informed the complainant that he had received the Hearing Officer's report on the hearing and advised that he was in agreement with the findings.

The Ministry contended that it was aware, as early as 1976, that there was discord in the Branch, which it attributed to a group of four employees, one of whom was the complainant. Furthermore, the Ministry had received information that the complainant was discontented with the situation in the Branch and that he had expressed this discontentment by making certain allegations against the Director. Ministry staff had discussed the personnel situation in the Branch with the Director who had provided information and documentation regarding the complainant's performance and workload. It was the Ministry's position that the complainant was a problem employee and that the Director was attempting to come to grips with the problems posed by his behaviour in the Branch.

However, an examination of the Ministry of Housing's personnel file on the complainant did not substantiate this. On the contrary, it appeared that the complainant was, in the words of the Ministry's solicitor, an "honest, experienced, competent, and conscientious employee". There were no reprimands against the complainant noted on his file.

During the course of the investigation, the Ombudsman formed certain possible conclusions and a recommendation. As required by section 19(3) of the Ombudsman Act, he reported his possible conclusions and recommendation to the Deputy Minister of Housing. The Ombudsman tentatively concluded, pursuant to section 22(1)(b) of the Ombudsman Act, that: 1) it was "unreasonable" for the Ministry of Housing to have proceeded against the complainant by way of a hearing pursuant to section 31 of Regulation 749 made under the Public Service Act based solely on the evidence of the clerk-typist; 2) it was "unreasonable" for the Ministry to have proceeded with the hearing against the complainant since preliminary inquiries conducted by its solicitor after the appointment of the Hearing Officer showed that the Ministry had no evidence at all to present in some of the charges, no persuasive evidence on the rest, and the solicitor had recommended on several occasions that the proceedings against the complainant be withdrawn; and 3) it was "unreasonable" for the Ministry not to reimburse the complainant for the legal expenses incurred by him as a result of the hearing, since the Ministry needlessly subjected him to a hearing notwithstanding the lack of any cogent evidence against him.

Accordingly, the Ombudsman tentatively recommended, pursuant to section 22(3)(g) of the Ombudsman Act, that the Ministry pay the complainant's legal expenses. However, the Ombudsman explained that he was not suggesting that as a general principle a ministry should pay legal costs whenever a civil servant is successful in his section 31 hearing. Rather, he was addressing the particular circumstances of the complainant's case.

The Ministry responded to the Ombudsman's report on March 26, 1981, accepting the possible recommendation. The complainant was subsequently reimbursed for his legal costs and the file on this matter closed.

DETAILED SUMMARY NO. 15

This complaint against a local Housing Authority in central Ontario was made by a 73-year old man who felt that he, his wife and their three-year old daughter were being unreasonably denied housing.

The Ombudsman notified the Chairman of the Housing Authority on June 23, 1980 of his intention to investigate. In his response of July 3, 1980, the Housing Authority stated its position that it had not housed the family because their past rent paying and housekeeping

practices, as confirmed by their previous landlords, indicated that they would be a poor risk as tenants. The Housing Authority also raised the question of criminal charges involving child molesting which had been laid against the complainant, adding that although the charges were subsequently dropped, it must consider the safety of other families in the housing project. The Housing Authority stated its willingness to accommodate the family in a rent supplement or isolated unit, thereby applying a restrictive measure to the application.

During the investigation, the Housing Manager was interviewed and the Housing Authority's file relating to the complainant was examined. The complainant and his wife were visited at their home and two of their previous landlords, as well as their current landlord, were contacted. Their Family Benefits workers were interviewed and the relevant files of the Ministry of Community and Social Services were reviewed.

The investigation revealed that while the complainant initially applied for housing in 1976, his situation was discussed for the first time at a Housing Authority meeting in October of 1978. At that time, it was decided to put the application on the pending file due to the complainant's poor previous tenant record, unstable family situation (a grandson occasionally lived with him), and concern about his reputation as a child molester. Approximately one year later, the Housing Authority discussed the case again and decided to investigate his previous tenancies. Three of his previous landlords were contacted. One landlord found the complainant's conduct to be "okay", but that there were arrears of rent. The second stated that the complainant's housekeeping was unsatisfactory, and that his attitude was poor. Information was obtained from a third person, from whom the complainant said he had never rented premises, indicating that the complainant's housekeeping was poor, he had rent problems and social problems were suspected. The Housing Authority's file did not reveal how it had learned of the criminal charges, and although the Housing Manager stated that the matter had been looked into, he was unable to confirm who had been contacted.

The investigator contacted the complainant's two most recent landlords, one of whom indicated that the complainant always paid his rent on time and that the family kept house fairly well. The second landlord described the complainant's housekeeping as "lousy" and said that he would not have him back as a tenant although he confirmed that the complainant paid his rent. The complainant's

current landlord stated that the complainant paid the rent on time each month and maintained a fairly good level of housekeeping.

The Housing Authority's file showed that three home visits were conducted at the complainant's residences. The home visitor's first report noted that it was hard to determine the level of housekeeping because the apartment was very small and cluttered, with no closets. The second home visit showed that the housekeeping was "fair", and on the occasion of the third visit, the home visitor found the housekeeping to be satisfactory. The family's current Family Benefits worker confirmed that she had recently visited the family and although they had no advance warning of her visit, she found the house to be clean and tidy. The investigator also found the complainant's home to be tidy and well kept.

Concerning the matter of the criminal charges, it was found that these were charges of indecent assault and that the complainant had been acquitted in September, 1976. Our investigation indicated that the charges had come to the attention of the Housing Authority via rumour, and the Housing Authority had not taken any steps to confirm this information.

The complainant stated that the Housing Authority did not give him its reasons for not housing him. Our review of the Housing Authority's file seemed to confirm this as there was very little correspondence to the complainant. The complainant claimed that he was not aware of the allegations against him concerning the rent arrears, housekeeping and criminal charges until he was sent a copy of the Housing Authority's statement to our Office in response to the Ombudsman's letter of intent to investigate.

Based on the results of the investigation conducted up until that time, the Ombudsman formed the possible conclusions, pursuant to section 22(1)(b) of the Ombudsman Act that: (1) the Housing Authority had made an unreasonable decision in 1978 when it put the complainant's application on the pending file due to his poor previous tenant record, his unstable family situation and concern about his reputation as a possible child molester since it did not investigate his tenant record until a year later, and no attempt was made to verify the facts relating to the criminal charges; (2) the Housing Authority unreasonably omitted to document fully the information on which it relied to deny the family housing; (3) the Housing Authority unreasonably omitted to inform the complainant of its reasons for not housing him and his family; and (4) the

Housing Authority unreasonably decided to apply restrictive measures to the application, as the available information had not demonstrated that the family would be undesirable tenants of a townhouse project.

The Ombudsman also made the following possible recommendations, pursuant to section 22(3)(d) and (g) of the Ombudsman Act: (1) that the Housing Authority fully document information provided to it which would influence a decision not to grant housing; (2) that the Housing Authority, unless there are compelling reasons to the contrary, provide applicants with its reasons for not housing them and give them an opportunity to respond; and (3) that the Housing Authority immediately re-evaluate the complainant's need for public housing assistance in light of his present situation, and reconsider the application based only on the family's need, with no restrictive measures applied. The results of the investigation, along with the possible conclusions and possible recommendations were set out in letters dated June 11, 1981, addressed to the Chairman of the Housing Authority and the Housing Manager, and they were provided with an opportunity to make representations.

The Housing Authority stated, in a letter dated July 2, 1981, its full agreement with the Ombudsman's first and second recommendations, in that full documentation should be maintained on file which may influence a decision not to grant housing, and that applicants should be provided with the reasons and an opportunity to respond. The Housing Authority disagreed with the Ombudsman's third possible recommendation stating that the basic concept of safeguarding the children of its tenants was an important issue.

In view of the Housing Authority's representations, the issue then became whether the Housing Authority had acted unreasonably in applying a restrictive measure to the complainant's application because he posed a potential risk as a child molester to the children of the Housing Authority's tenants.

After considering the Housing Authority's representations, the Ombudsman wrote to the Housing Manager on September 11, 1981, stating that he was pleased that the Housing Authority had concurred with his first two recommendations. The Ombudsman's letter went on to say that it appeared that the Housing Authority's conclusion that the complainant posed a potential risk to the children of its residents and the ensuing decision to apply the restrictive measure may have been based on insufficient evidence. The Ombudsman requested a meeting with the Housing

Manager and the Chairman of the Housing Authority in order to discuss this point. During this meeting on October 21, 1981, the Housing Manager stated that the Housing Authority had received information that the complainant's health was failing. The Housing Authority had considered this information at its previous meeting and also gave consideration to the fact that six years had passed without any occurrence of child-molesting activity on the part of the complainant. The Housing Manager reported that in a majority decision, the Housing Authority had accepted the complainant's application for housing and he had been placed on the waiting list with no restrictive measures applied.

In view of these facts, and the action taken by the Housing Authority, the complaint was considered to be resolved and the file was closed on November 6, 1981.

MINISTRY OF
INTERGOVERNMENTAL AFFAIRS

DETAILED SUMMARY NO. 16

This complaint was made on March 3, 1981, by a property owner whose property assessment had been altered by a Judge of the County Court so as to include a portion assessed as farm land.

Informal inquiries revealed that this alteration occurred after the assessment roll had been returned to the Clerk of the Municipality. The code applied by the Ministry of Revenue on the roll therefore remained "RU", indicating an entirely residential property. The Ministry of Intergovernmental Affairs relied on the coding as it appeared on the roll to determine those property owners entitled to apply under the Farm Tax Reduction Program for a rebate of property tax paid on farm land. This complainant, therefore, did not receive application forms and was unable to apply for a rebate. The complainant felt that it was unfair that he had thus been denied a rebate.

The Ombudsman notified both the Ministry of Revenue and the Ministry of Intergovernmental Affairs on July 8, 1981, of his intention to investigate this complaint and requested a statement of their positions.

In his response of August 25, 1981, the Deputy Minister of Revenue noted that after a review of the situation, he had instructed his staff to inform officials of the Ministry of Intergovernmental Affairs that there should have been a coding change with respect to this property. Shortly thereafter, the responsibility for the Farm Tax Reduction Program was transferred to the Ministry of Municipal Affairs and Housing.

The Ombudsman then received a letter on September 30, 1981 from the Deputy Minister of Municipal Affairs and Housing stating that the complainant's applications for the rebate were being processed. Within a week of the Ombudsman's receipt of this letter, the complainant confirmed having received and cashed cheques for the amount of his rebate.

As the matter had been resolved to the satisfaction of the complainant, the file was closed on October 19, 1981.

MINISTRY OF
LABOUR

THE WORKMEN'S COMPENSATION BOARD

DETAILED SUMMARY NO. 17

The complainant contacted the Ombudsman during a hearing held in Windsor in November, 1978. The complaint focused on the decision of the Appeal Board of the Workmen's Compensation Board to deny a request for continuing entitlement for a right knee disability which the worker maintained was related to his work accident of March 30, 1971. After determining the Ombudsman's jurisdiction to investigate, the Board was notified of the substance of the complaint.

The injured worker first experienced non-compensable right knee discomfort in 1959. There was also some information to suggest that the complainant injured his right knee in a non-compensable motor vehicle accident in 1968. Employment records revealed that subsequent to January, 1968, the complainant had a right knee "cartilage problem" and that in March, 1969 he had a "possible damaged meniscus or orthopaedic problem" in his right knee.

On March 30, 1971, the complainant's right knee gave out and he fell three feet into a pit. The same day, the complainant's family physician diagnosed a strained right calf muscle. Right knee x-rays taken on April 28, 1971, revealed "minimal osteoarthritic changes". An orthopaedic specialist examined the complainant in October, 1971 and diagnosed a right medial meniscus tear. The specialist arranged for surgery in October, 1971 and notified the Board that the knee joint appeared to be satisfactory except for some degenerative changes. The Board allowed the complainant's claim on the basis of an aggravation of pre-existing degenerative changes in his right knee and awarded compensation benefits until the complainant returned to work on February 1, 1972.

In May, 1976, because of further right knee discomfort, the complainant visited his orthopaedic specialist. The injured worker was then referred to another specialist for a second opinion. The second specialist recommended surgery which was performed in November, 1977.

A senior Board medical official reviewed the case on two separate occasions and formed the opinion that the continuing right knee problems were the result of a pre-existing condition and not related to the compensable accident. The specialist who performed the complainant's surgery, however, was of the opinion that a direct sequential relationship existed between the accident and the condition requiring further surgery.

During the course of the investigation, the Ombudsman consulted an independent orthopaedic specialist in an attempt to resolve the medical disagreement. The complainant's work history and his medical record were sent to the specialist. In a report dated July 7, 1980, the specialist stated that the complainant would not have required surgery in 1977, if he had not torn his medial meniscus previously and had it removed in 1971.

Before the Ombudsman took any further action in this matter, the independent specialist's report was sent to the Board on July 18, 1980, to determine if the Board was prepared to reconsider its previous decision. The Board advised the Ombudsman that it was prepared to reconsider. Accordingly, a new decision dated May 13, 1981, was rendered. The decision in part stated:

...The Appeal Board finds the validity of the original acceptance of the meniscus repair as a charge against this claim, highly suspect. The Appeal Board is not, however, prepared to reverse this decision. The Panel accepts the Surgical Consultant's opinion vis-a-vis the relationship between the surgery and its sequelae, and the subsequent development of the post-traumatic arthritic condition. The Appeal Board therefore concludes that (the complainant's) entitlement includes the surgery carried out on November 2nd, 1977.

The complainant was advised by letter on June 3, 1981, that his file would be closed, as the complaint had been resolved.

DETAILED SUMMARY NO. 18

The complainant advised the Ombudsman on August 28, 1978, that he was dissatisfied with a decision of the Appeal Board of the Workmen's Compensation Board. Specifically, he contended that he was entitled to temporary total benefits from the Board for the period December, 1977 to April, 1978.

The Chairman of the Workmen's Compensation Board was subsequently notified of the Ombudsman's intention to investigate this complaint. The Vice-Chairman of Appeals advised the Ombudsman that the Board did not wish to make a statement concerning the facts of the case at that time. The file was then assigned for investigation.

The investigation showed that the complainant, a carpenter in his fifties, bent down at work, slipped on some dirt and twisted his left knee in November, 1976. Prior to this compensable accident, the complainant had a condition in his left leg which had been present since his youth. Corrective surgery had been performed in October, 1945. He had commenced working for the accident employer in October, 1955 and had an excellent work history during his twenty-five years of service.

The Workmen's Compensation Board accepted the claim as compensable and awarded benefits to the complainant.

On December 1, 1977, the complainant was examined by a surgical consultant at the Workmen's Compensation Board. The consultant determined that the injured employee was capable of returning to his pre-accident work. Benefits were therefore terminated. The complainant's orthopaedic specialist, however, continued to report to the Board that the patient was making slow improvement and was not yet ready to return to work. By the end of April, 1978, the complainant had returned to work and had no further problems with his leg.

The Appeal Board, in its decision, denied the worker further benefits because it found that the ongoing disability was due to the complainant's pre-existing non-compensable disability.

During the course of the investigation, the Ombudsman came to the possible conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board was "unreasonable" to find that the pre-existing condition was the disabling factor. In support of his conclusion, the Ombudsman noted the family doctor's statement that he had not treated the complainant for any leg complaints for the last thirteen years, the complainant's work history, and the treating orthopaedic surgeon's opinion that the leg condition was an incidental condition and the underlying cause of disability was the knee injury. The Ombudsman also indicated that it might be open to him to recommend, pursuant to section 22(3)(g) of the Ombudsman Act, that the Board revoke its decision and grant the complainant entitlement to temporary total benefits.

The Workmen's Compensation Board and the employer were accorded an opportunity, pursuant to section 19(3) of the Ombudsman Act, to make submissions concerning the Ombudsman's possible conclusion and recommendation.

The Board indicated that it was not prepared to implement the Ombudsman's possible recommendation because the

evidence relied on by the Appeal Board had not been refuted by the Ombudsman. The employer agreed with the Ombudsman's possible recommendation.

After considering these submissions, the Ombudsman issued a report pursuant to section 22 of the Ombudsman Act and recommended that the Board revoke its decision and grant the complainant entitlement. This recommendation was based on the Ombudsman's conclusion that the Appeal Board had been "unreasonable" in finding that the complainant's ongoing disability was due entirely to his pre-existing non-compensable disability.

Further discussion ensued between the Workmen's Compensation Board and the Ombudsman. At the Board's suggestion, the Ombudsman agreed to having the claimant examined by an independent medical specialist to obtain a further opinion.

On June 17, 1981, the complainant was examined by an orthopaedic specialist who subsequently recommended to the Board that the benefit of doubt be extended to the complainant. In a letter dated August 11, 1981, received from the Board, the Ombudsman was advised that total disability benefits from December 2, 1977, to April 28, 1978, would be paid to the complainant.

Upon receiving the new decision of the Appeal Board, the Ombudsman concluded that the action taken by the Board to extend entitlement for the above period was appropriate, and after advising the Board and the complainant of the results of the investigation, the file was closed.

THE WORKMEN'S COMPENSATION BOARD

RECOMMENDATIONS DENIED

DETAILED SUMMARY NO. 19

On August 3, 1979 the complainant sent a copy of a Workmen's Compensation Board Appeal Board decision to the Ombudsman. In a telephone conversation with a member of the Ombudsman's staff on August 20, he stated his dissatisfaction with the decision which refused to increase his attendance allowance.

The Workmen's Compensation Board was notified of the Ombudsman's intention to investigate. The Chairman indicated that the Board did not wish to make a statement at that time. The file was then referred to a member of our investigative staff for investigation.

The investigation showed that the worker had suffered a severe head injury in 1974. After a lengthy recuperation, he was determined to be 100% disabled by the Workmen's Compensation Board, because of visual impairment, deficiency of mental functioning, dizziness, residual left hemiparesis, and post-traumatic personality changes.

Since the complainant was unable to attend to his own needs and was not able to be left alone, the Board granted his wife an attendance allowance of \$60 per month. This allowance was increased to \$120 per month retroactive to November 25, 1975. In accordance with the Board's policy outlining the different classifications for those entitled to attendance allowances, the complainant was placed in Group 2.

The complainant appealed the classification. In its decision dated March 12, 1979, the Appeal Board concluded that the allowance was granted in conformity with the policy and that the evidence did not indicate that the Board should depart from that policy. The award was confirmed and the appeal was denied. Amendments to the amounts payable under this schedule increased the monthly award to \$204 per month.

During the course of his investigation, the Ombudsman formed the tentative conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the decision was based on a policy, which was in part "unreasonable", in that it was too restrictive. In support of this conclusion, the Ombudsman noted that Group 1 head injury victims, according to the policy, would require supervision as for a child. In the Ombudsman's view, notwithstanding the tasks required of the person supervising the injured party, the minimum cost to provide supervision as for a child would be in the neighbourhood of \$300 to \$400 per month. The Ombudsman also noted that section 52(1)(c) of the

Workmen's Compensation Act required the Board to provide such attendance "as may be necessary as a result of the injury". That being the case, the Ombudsman was of the view that the Board should make a realistic determination of the reasonable costs for such services.

The Ombudsman also came to the conclusion that it was "unreasonable", given the evidence, for the Appeal Board to find that it should not have departed from the guidelines expressed in the policy. This conclusion was based on the evidence of the rehabilitation officer, which indicated that the complainant needed constant supervision and frequent assistance. It appeared that the Board was "unreasonable" to insist that the complainant's attendance allowance should remain at an arbitrary figure stated in guidelines when the cost of the attendance to which he was entitled obviously exceeded that amount.

The Ombudsman, therefore, made the possible recommendations, pursuant to section 22(3)(d) and (g) of the Ombudsman Act, that the Board should alter its policy concerning attendance allowances to take into consideration reasonable costs and that the Appeal Board should revoke its decision and grant the complainant an attendance allowance sufficient to cover reasonable costs.

The Board and the accident employer were invited to make representations with respect to these possible conclusions and recommendations. No response was received from the accident employer.

In its response, the Board indicated that the individuals who were receiving Group 1 and 2 attendance allowances did not require 24-hour attendance or supervision. The Board also outlined the reasons why the complainant did not meet the criteria for Group 3.

The Ombudsman considered the Board's response and issued a final report dated March 1, 1982. In the Ombudsman's view, someone who requires supervision as for a child would require a person to be available at all times to check on him, although the injured party might not require attendance in terms of dressing, washing, eating, etc. It was unreasonable for the Board to assume that the complainant could receive supervision including meal preparation and attendance to the washroom for \$204 per month.

The Ombudsman reiterated his possible conclusions and recommended, pursuant to section 22(3)(d) of the Ombudsman Act, that the Board alter its policy of attendance allowances, taking into consideration the reasonable costs. The Ombudsman also recommended that the Board revoke its

decision and award the complainant an attendance allowance sufficient to cover reasonable costs of providing supervision and assistance which his condition necessitated.

On March 28, 1982, the Ombudsman was advised that the Board did not intend to implement his recommendation. A written response to the Ombudsman's report had not been received; however, in the Ombudsman's opinion sufficient time had elapsed and therefore he referred the matter to the Premier pursuant to sections 22(4) and 22(5) of the Ombudsman Act. The results of his findings and the response of the Board were reported to the complainant and the file was closed.

DETAILED SUMMARY NO. 20

On July 4, 1979, the Appeal Board of the Workmen's Compensation Board rendered a decision denying the complainant entitlement to a permanent disability award for a hearing loss. This decision was subsequently amended on August 15, 1979, awarding the complainant wage loss benefits under section 41 (now section 42) of the Workmen's Compensation Act. On September 17, 1979, the complainant wrote a letter to the Ombudsman requesting that he investigate this decision.

After receiving a reply from the Vice-Chairman of Appeals in response to our notification of intent to investigate this complaint, the file was assigned for investigation.

The investigation of this complaint showed that the complainant had suffered a hearing loss as a result of his exposure to high levels of noise at work. A 25 decibel loss was found in one ear and a 41 decibel loss in the other. To avoid further deterioration in his hearing, the complainant was provided with another job by his employer. The change in job resulted in a twelve-cent-per-hour wage loss.

In its decision, the Appeal Board granted the worker entitlement to benefits to compensate him for that wage loss. These benefits, however, were to be discontinued when his post-hearing-loss earnings equaled his pre-hearing-loss earnings. The worker's earnings had increased because of a union contract granting adjustments to both pay scales. The worker continued to earn less than he would have in his pre-hearing-loss job category.

However, the Appeal Board denied the complainant entitlement to a permanent disability award because, in

the opinion of its Medical Consultant, the complainant's hearing loss was not sufficient to warrant a permanent partial disability award. The Medical Consultant stated that the required 35 decibel loss in each ear had not been established.

During the course of his investigation, the Ombudsman came to the tentative conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board had acted unreasonably by fettering its discretion. It appeared to the Ombudsman that the complainant was not granted benefits because he did not meet policy guidelines rather than because of any statutory bar to such entitlement. Because in the Ombudsman's view, if it had not been for the hearing loss, the complainant would not have experienced an impairment to his earning capacity, he met the requirements of section 42(1) [now section 43(1)] of the Workmen's Compensation Act. The Ombudsman made the possible recommendation, pursuant to section 22(3)(c) of the Ombudsman Act, that the Board vary its decision and grant a permanent disability award for bilateral hearing loss.

Since it seemed to the Ombudsman that the Board and the employer could be adversely affected by his possible conclusion and recommendation, he accorded the Board and the employer an opportunity to make representations pursuant to section 19(3) of the Ombudsman Act.

In its response, the Board indicated that the complainant had not met the guidelines as provided for under section 42(3) [now section 43(3)] of the Workmen's Compensation Act. The Board also stated that a reduction in earnings did not establish the existence of a permanent disability for the purposes of an award under section 42(1) [now section 43(1)]. The employer indicated that it did not agree with the Ombudsman's possible recommendation, and agreed with the Board's final disposition of the matter. The Ombudsman carefully considered these representations.

In his report dated August 19, 1981, the Ombudsman concluded, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board had failed to reasonably exercise its discretion by treating what were intended to be guidelines as prerequisites for entitlement. By so doing, the Board had failed to give the complainant's request for a permanent disability award proper consideration. Accordingly, the Ombudsman recommended that the Board should cancel its decision and reconsider exercising the discretion provided by section 42 (now section 43) of the Workmen's Compensation Act.

The Board responded to the Ombudsman's report by stating that, in its opinion, its discretion was referable only to deciding if guidelines were applicable. The Board decided that the use of guidelines in this case was appropriate because any other decision would have been arbitrary. Therefore, the Board did not accept that it had fettered its discretion and declined to implement the Ombudsman's recommendation.

After considering the Board's response, the Ombudsman determined that it was not an adequate or appropriate response to his recommendation. On February 19, 1982, pursuant to section 22(4) and section 22(5) of the Ombudsman Act, the Premier was informed of the results of the Ombudsman's investigation. The complainant and the Board were also notified of the results of the investigation, and the file was closed.

In an attempt to resolve the matter, further discussions were held between the Ombudsman and the Vice-Chairman of the Board on March 3, 1982. As a result of that meeting, the Board provided the Ombudsman with a further written submission which included an excerpt from the publication of the American Academy of Ophthalmology and Otolaryngology. According to this excerpt, the complainant's hearing loss would have disabled him only from hearing faint speech. Given this limited impairment, it could not reasonably be said that he had a permanent disability. In considering these submissions, the Ombudsman remained of the view that the hearing impairment suffered by the complainant had caused an impairment to his earning capacity and, therefore, was sufficient to warrant an award from the Board.

DETAILED SUMMARY NO. 21

On October 30, 1978, the complainant's M.P.P. advised the Ombudsman of the worker's dissatisfaction concerning a decision of the Appeal Board of the Workmen's Compensation Board. The M.P.P. requested that an investigation be undertaken by the Ombudsman. The worker was dissatisfied with the Appeal Board's decision to confirm a 65% permanent disability award as an adequate reflection of his disabilities stemming from his accident on April 25, 1969.

The Board was advised of the Ombudsman's intention to investigate the matter. The Vice-Chairman of Appeals indicated that the Board did not want to make a statement and the file was then assigned for investigation.

The investigation showed that following the accident on April 25, 1969, the complainant underwent spinal surgery in May, 1972. After the surgery, it became apparent that the complainant was suffering from a psychiatric disability and he was referred to a number of psychiatrists.

In July, 1973, the Board psychiatric consultant reviewed the file and without the benefit of an examination concluded that the relationship between the complainant's compensable accident, the subsequent treatment and his psychiatric condition was at least minimal. The Board surgical consultant reviewed the previous memoranda and concluded that the psychiatric disability was in the 10% to 30% range. In May, 1976, the Board Senior Pension Medical Officer assessed the complainant's psychiatric disability at 70% but restricted the award to 35%. No specific reasons were given by the Board pension advisor for this restriction. The complainant was eventually granted a 35% permanent disability award for his psychiatric disability and a 30% award recognizing his residual physical disability.

During the course of his investigation, the Ombudsman came to the tentative conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board's decision, which confirmed the 35% award for the emotional disability, was "unreasonable". Given the available evidence, it appeared to the Ombudsman that the Appeal Board was unreasonable in placing a 50% limitation on the complainant's entitlement regarding his psychiatric disability.

The Ombudsman's opinion was based on the Board's policy concerning non-measurable pre-existing conditions, which he assumed was the basis for the reduction in the award. According to that policy, if a pre-existing condition produced a major pre-accident disability, the total assessment of the award should be reduced by 50%. However, in reviewing the evidence, the Ombudsman was unable to ascertain any indication of a major pre-existing disability. The Ombudsman noted a social worker's report in May, 1978, which failed to establish that the worker's psychological state was in any way a deterrent to his capacity to work before the accident. The complainant's family doctor reported that there was no indication that he was not a well-balanced man before the injury. The Ombudsman, therefore, made the possible recommendation, pursuant to section 22(3)(g) of the Ombudsman Act, that the Board vary its decision and grant the complainant the full assessed value of his permanent partial disability pension recognizing the non-organic component of the disability.

Both the employer and the Board were accorded an opportunity to make representations concerning the Ombudsman's possible conclusions and recommendation. Before responding, the Board referred the matter to its Medical Branch to determine the reasons for the reduction. The Board also reviewed its relevant policy. On November 17, 1980, the Board advised the Ombudsman that it was not prepared to implement the possible recommendation because, in its view, the accident was minor and there was no dramatic triggering incident to cause any major psychological disability. The Appeal Board also indicated that it was unreasonable to assume that all of the psychological disability arose out of the compensable accident.

On October 1, 1980, the employer advised the Ombudsman that the complainant did not have any psychological problems, nor was he under any mental stress, while in their employ.

After receiving these representations, the Ombudsman made further inquiries to establish the actual policy in effect at the time of the decision. Policies concerning psychological disability dated July 11, 1974, and the Second Injury and Enhancement Fund dated May 5, 1970, were provided by the Board. "Guidelines concerning the Adjudication with Respect to Mental Conditions under Workmen's Compensation", dated October, 1979, were also submitted by the Board. To clarify the issue, the Board was asked in a letter dated May 21, 1981, to provide the exact policy which was relied upon to reduce the benefits. On June 3, 1981, the Ombudsman was advised that the Board's decision in this case was based on the practice of the Board, and not any specific policy.

After considering these further submissions, the Ombudsman issued a report on July 9, 1981. In that report he expressed his opinion that the Appeal Board's decision was "unreasonable" as there was insufficient evidence of a pre-existing condition to justify a reduction in the award granted for the psychological disability. The Ombudsman, therefore, recommended, pursuant to section 22(3)(g) of the Ombudsman Act, that the Board revoke its decision and grant the complainant the full assessed value of his permanent partial disability award.

On November 5, 1981, the Board responded and indicated that it would not implement the Ombudsman's recommendation because the psychiatric award was reduced by one-half of its assessed value in accordance with the policy at that time. The Board indicated that the policy was to reduce such awards where the effect of the prior condition was high and the aggravating accident was minor. The Board

indicated that the policy now in use recommended reductions when regard was given to the extent the pre-existing condition influenced the injured employee's pre-accident work record and social integration. Because of the new policy, the Board indicated that it would reassess the complainant. However, the reassessment was not possible because the complainant had moved to Israel. The Board then suggested that it would reassess the complainant if he returned to Ontario.

During consideration of the Board's response, the Ombudsman noted the confusion surrounding the policy in effect at the time of the decision and the lack of evidence to substantiate a pre-existing psychological disability. He concluded, therefore, that the Board's suggestion that the complainant be reassessed in 1981 was not an adequate and appropriate response to his recommendation. In the Ombudsman's opinion, given the evidence before the Appeal Board in 1978, notwithstanding which policy was in effect, it was unreasonable to reduce the psychiatric award by 50%. Accordingly, a copy of his report and the Board's response were provided to the Premier, pursuant to sections 22(4) and 22(5) of the Ombudsman Act. The Workmen's Compensation Board and the complainant were accordingly advised and the file was closed on January 4, 1982.

DETAILED SUMMARY NO. 22

This was a complaint against the Workmen's Compensation Board of Ontario for denying the complainant entitlement to a temporary supplement under the provisions of section 42(5) of the Workmen's Compensation Act. The complainant felt that as a result of his compensable accident on January 29, 1964, his impairment to earning capacity was significantly greater than was usual for the nature and degree of his injury as he had been compelled to change his occupation to a lower paying job.

After receiving the Vice-Chairman of Appeals' statement in reply to our notification of intent to investigate this complaint, the file was assigned for investigation.

The investigation revealed that on January 29, 1964, the complainant injured his back while in the course of his employment as an underground miner. The complainant returned to work in March, 1964, and while seeking regular medical attention continued to work until 1973. In July, 1973, he suffered a recurrence of his back disability and in April, 1974, surgery was performed. Due to the complainant's change in occupation from underground mine

APPENDICES

APPENDIX A

RECOMMENDATIONS DENIED

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|--|-------------------------|--|---|--|---|
| <u>MINISTRY OF GOVERNMENT SERVICES</u> | | | | | |
| 2 | 60 | That the Ministry pay the complainant the sum of \$1,318.00 for his losses and legal expenses. | 3, Recommendation 34 | That the <u>Audit Act</u> and the <u>Financial Administration Act</u> be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of the <u>Ombudsman Act</u> have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Select Committee. | Recommended amendments have yet to be enacted. The Ministry is willing to comply with the Ombudsman's recommendation if the payment can be lawfully made. |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---|--|--|
| <u>MINISTRY OF HEALTH</u> | | | | | |
| 4 | 45 | That the Ministry consider what changes should be made to the <u>Public Hospitals Act, Sec. 47</u> in order to give effect to the principle of a more widely distributed membership on the Hospital Appeal Board. That the Ministry inquire into the provisions of the <u>Public Hospitals Act</u> with a view to preventing acts flowing from Sections 44 to 50 of that Act which may be improperly discriminatory. It was further suggested that this inquiry be assigned to an organization such as the Ontario Council of Health. | 5, Recommendation 27 | That the Ministry implement as soon as possible the recommendation of the Ombudsman. | The Minister instituted inquiries of the Ontario Council of Health in an effort to gain necessary insights into the process in other jurisdictions. The Council's report was received and considered by the Ministry, which intends to meet shortly with representatives of both the O.M.A. and the O.H.A. |
| | | | 6, Recommendation 1 | That the Ministry consider what changes should be made to the <u>Public Hospitals Act</u> and in <u>Sec. 47</u> in particular, including changes in the quorum provisions and length of membership respecting the <u>Hospital Appeal Board</u> . Further, the Ministry cause an inquiry to be made into the provisions of the <u>Public Hospitals Act</u> to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory. | |
| | | | 8 | | The Committee reminded the Minister of Health "that to the extent that the Council of Health identifies appropriate legislative change and so recommends to the Minister the Committee will view these legislative changes as necessary to fully comply with the recommendations in its Sixth Report". |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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| 6 | 21 | (2 complaints) that the regulations made pursuant to the Health Insurance Act be amended to provide that those subscribers who obtain the prior approval of the General Manager of the Plan have their medical fees, incurred for insured services performed outside the Province of Ontario, paid by the Plan to an extent substantially greater than would otherwise be paid for an analogous service listed in the O.M.A. fee schedule. | 7 | The Committee supported the substance of the Ombudsman's recommendation and recommended to the Legislature for approval and adoption that the Ministry of Health cause an amendment to be made to the Health Insurance Act providing that "where the amount payable by the Plan for an insured service rendered by a physician is not prescribed by the regulations, it is the function of the General Manager and he has the power to determine the amount". | As of Jan. 1, 1980, Code R990 was added to the OHIP Schedule of Benefits (Schedule 15 of Regulation 452, R.R.O. 1980). It specifies that: "Independent consideration also will be given to claims for other unusual but generally accepted surgical procedures which are not listed specifically in the Schedule (excluding non-major variations of listed procedures)." |
| | | | 8, Recommendation 1 | That the Ministry give prompt notice to all persons whose claims for benefits under R990 are in the future refused, full particulars of the appeal procedures available to them at the same time as the notice of refusal is communicated. | |
| | | | 9, Recommendation 1 | That all decisions made by OHIP in respect of any claim made for benefits pursuant to Code R990 (now R991) be subject to the appeal procedures set out in the General Manager's directive dated May 21st, 1981 and the Memorandum of the Director of the Professional Services Branch dated August 13, 1981. | OHIP continues to consider that there is no appeal where the claim for benefits is denied on the grounds that the procedure is available in Ontario. |

MINISTRY OF HEALTH

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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MINISTRY OF HOUSING

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|---|----|--|------------------------|---|---|
| 7 | 17 | | 8, Recommendation 3 | <p>That the Ontario Housing Corporation immediately conduct a review and study of its manuals and the decision-making functions of Housing Authorities in particular for the purpose of amending its manuals to give Housing Authorities more guidance in order that the Rules of Administrative Fairness will be more strictly adhered to.</p> | <p>The Ontario Housing Corporation has instituted a formal appeals policy allowing applicants and tenants to seek review of decisions made by Local Housing Authorities. They are informed of the reasons for the decision and may appeal it to the members of the Housing Authority.</p> <p>The Corporation has rewritten portions of the Manual, and the revision is continuing.</p> <p>The Committee deferred further comment and consideration of the Corporation's response to the recommendation until it has received and reviewed the field manuals as amended.</p> |
|---|----|--|------------------------|---|---|

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|-------------------------------------|-------------------------|---|---|---|--|
| <u>MINISTRY OF LABOUR</u> | | | | | |
| <u>Workmen's Compensation Board</u> | | | | | |
| 6 | 38 | That the Appeal Board should reconsider its December 15, 1971 decision in the light of (this) report with a view to granting (the worker) entitlement to a Permanent Disability Award for his disability diagnosed as post-traumatic neurosis. Any award should be made retroactive to June 4, 1971 when (the worker's) temporary benefits were terminated. | 7 | <p>The W.C.B. reconsider, by hearing, its decision of December 15, 1971. In that hearing the Board should at least hear fresh evidence respecting the relationship between the complainant's symptoms and the compensable accident both from the Medical Referee appointed in 1971 and the psychiatrist retained by the Ombudsman during the course of his investigation.</p> | <p>On October 24, 1979, the Board rendered a decision directing that the additional medical report, the detailed summary and recommendation of the Select Committee be referred to the Medical Referee for his further opinion and report. The Medical Referee was to examine the complainant if, in his opinion, such an examination was required.</p> <p>After receiving the Medical Referee's report, the Board reviewed and determined that the policy of Benefit Doubt was not appropriate in this case. The Appeal was denied.</p> |
| | | | 8 | <p>The Committee in its Eighth Report noted its "grave reservations</p> | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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MINISTRY OF LABOUR

Workmen's Compensation Board

(cont'd)

that the Appeal Board Panel in this matter considered the application of the policy of the benefit of the doubt as intended by the Committee and articulated by the Corporate Board policy itself". After discussing these issues fully with the Board, the Committee intends to report to the Legislature with any appropriate recommendations.

This case was again discussed during the Committee's hearings in September, 1981. It was agreed that the Ombudsman and the Board would make submissions on the applicability of the policy of the "benefit of doubt".

APPENDIX B
RECOMMENDATIONS UNDER
SECTION 22(3)(d) or (e)

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|--|---------------------|---|--------------------------------------|--|--|
| MINISTRY OF EDUCATION | | | | | | | |
| 2 | 47 | That a more comprehensive insurance policy be made available to students, one which would provide compensation for injuries resulting in the loss of future earning power. | May 4, 1977 | Deputy Minister took steps to meet with insurance industry representatives regarding more comprehensive insurance for students. | 3, 23 | That the Ministry forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type at a realistic premium which would adequately compensate a pupil for injuries sustained in the case of a pure accident as the result of participation in shop classes and in organized athletic activities. | Ministry conducted a feasibility study. Not likely insurance scheme will be implemented unless it is made compulsory. Has been further delayed by consideration of including cooperative education students under workmen's compensation scheme. |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|--|--------------------------------------|--|--|
| 2 | 57 | That the Public Ser- vice Superannuation Act be amended in order to eliminate all restrictions on the re-employment of provincial super- annuates except where the nature of their re-employment is such that they re- sume contribution to the Public Ser- vice Superannuation Fund. | Aug. 31, 1976 | Executive Sec- retary of the Civil Service Commission agreed to recommend to Management Board of Cab- inet changes in <u>Public Ser- vice Superan- nuation Act.</u> | 3, Recommendation 24 | That the Ministry table appropriate legislation in the Legislature during the current session removing the present restriction on the total current earn- ings of a provincial superannuate. | The Select Committee on Pensions has en- dorsed the recommen- dations of the Royal Commission on the Status of Pensions in Ontario, which would give effect to the Committee's re- commendation. The Ministry intends to present the required amendment. |

MINISTRY OF
GOVERNMENT SERVICES

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|-------------------------------------|---|------------------------------------|--|
| 3 | 40 | <p>That: 1) all applicants for the right to construct a nursing home be informed well in advance of the due date for application, of the criteria upon which the Ministry intends to rely in making the award for a nursing home including the weight to be attached to each factor.</p> <p>3) <u>The Nursing Homes Act, 1972, be amended in order that provision be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. This licence should be conditional</u></p> | May 4, 1977 | Agreed to implement recommendation. | 5, page 32. The Committee considered this complaint for the purpose of following up with the Ministry as to the implementation of the Ombudsman's recommendation as set out at pages 177 and 178 of the Ombudsman's 3rd Report. | | Necessary amendments have yet to be enacted. |
| | | <p>3) <u>The Nursing Homes Act, 1972, be amended in order that provision be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. This licence should be conditional</u></p> | | | The Executive Chairman of the Area Planning Coordinators responded on behalf of the Ministry as to the additional steps which have been taken subsequent to the letter from the Minister to the | | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|-------------------------------|-------------------------|--|---------------------|-----------------------|--------------------------------------|--|----------------|
| <u>MINISTRY OF HEALTH</u> | | | | | | | |
| (cont'd) | | | | | | | |
| | | on compliance with the terms of the pro- posal and any subse- quent stipulations imposed by the Mini- stry prior to the granting of an uncon- ditional licence. | | | | Ombudsman dated May 4, 1977. The Committee has at- tached the said response to this report under Part IX as Schedule D. The Committee is of the opinion that the Ministry has and will con- tinue to fully comply with the recommendations of the Ombudsman. | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|-------------------------------|-------------------------|---|---------------------|---|--------------------------------------|--|--|
| <u>MINISTRY OF HEALTH</u> | | | | | | | |
| 4 | 45 | That the Ministry consider what changes should be made to the <u>Public Hospitals Act</u> , Section 47 in order to give effect to the principle of a more widely distributed membership on the Hospital Appeal Board. That the Ministry enquire into the provisions of the <u>Public Hospitals Act</u> with a view to preventing acts flowing from Sections 44 and 50 of that Act, which may be improperly discriminatory. It was further suggested that this inquiry be assigned to an organization such as the Ontario Council of Health. | Jan. 1978 | The Deputy Minister took the position that decisions of hospital boards and the Hospital Appeal Board in general do not fall within the jurisdiction of the Ombudsman and for that reason the Ministry could only accept the Ombudsman's comments and recommendations as informal observations and suggestions. | 5, 27 6, 1 | That the Ministry of Health implement as soon possible the recommendation of the Ombudsman. That the Ministry of Health consider what changes should be made to the <u>Public Hospitals Act</u> and Section 47 in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board. Further, the Ministry of Health cause an inquiry to be made into the provisions of the <u>Public Hospitals Act</u> to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory. | The Minister instituted inquiries of the Ontario Council of Health in an effort to gain necessary insights into the process in other jurisdictions. The Council's report was received and considered by the Ministry, which intends to meet shortly with representatives of both the O.M.A. and the O.H.A. |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|---|----------------|
| | | <u>MINISTRY OF HEALTH</u> | | | | | |
| | | (cont'd) | | | | | |
| | | | | | 8 | The Committee reminded the Minister of Health "that to the extent that the Council of Health identifies appropriate legislative change and so recommends to the Minister, the Committee will view those legislative changes as necessary to fully comply with the recommendations in its Sixth Report". | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|------------------------------------|----------------|
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|------------------------------------|----------------|

MINISTRY OF
LABOUR

Workmen's Compensation Board

| | | | | | | | |
|---|-----|---|--|--|----------------------|---|--|
| 2 | 132 | That the Board either request jurisdictional determination from the courts or request that the Workmen's Compensation Act be amended to give the Board the power to both collect and offset overpayments. | | | 3, Recommendation 31 | Amend the Workmen's Compensation Act to provide for statutory authority to recover or write-off overpayments. | Recommended amendment has yet to be enacted. |
|---|-----|---|--|--|----------------------|---|--|

APPENDIX C
STATISTICAL TABLES

| <u>Ministries/Agencies</u> | <u>WITHIN JURISDICTION</u> | <u>OUTSIDE JURISDICTION</u> | <u>NOT DETERMINED</u> | <u>INFORMATION REQUESTS / SUBMISSIONS</u> | <u>TOTAL</u> |
|---|--------------------------------|---------------------------------|---------------------------|---|------------------|
| Agriculture and Food | 26 | 12 | 2 | 1 | 41 |
| Agricultural Rehabilitation and Development Directorate | | 1 | | | 1 |
| Crop Insurance Commission of Ontario | 3 | | | | 3 |
| Farm Products Appeal Tribunal | 1 | | | | 1 |
| Farm Products Marketing Board | 3 | | | | 3 |
| Milk Commission of Ontario | 1 | | | | 1 |
| Ontario Drainage Tribunal | 1 | | | | 1 |
| Ontario Flue-Cured Tobacco Growers' Board | 1 | | | | 1 |
| Ontario Milk Marketing Board | | 1 | | | 1 |
| Attorney General | 23 | 73 | | 6 | 102 |
| Assessment Review Court | 1 | 4 | | | 5 |
| Criminal Injuries Compensation Board | 3 | 4 | | 1 | 8 |
| Land Compensation Board | | 1 | | 1 | 2 |
| Ontario Municipal Board | 12 | 25 | 1 | 6 | 44 |
| Public Trustee | 8 | 1 | 1 | 1 | 11 |
| Colleges and Universities | 35 | 52 | 2 | | 91 |
| Colleges of Applied Arts and Technology | 7 | 5 | 3 | | 15 |
| Community and Social Services Centres for the Developmentally Handicapped | 69 | 164 | 12 | 41 | 286 |
| Training Schools | | 3 | | | 3 |
| Total | <u>15</u> 83 | <u>4</u> 171 | <u>4</u> 16 | <u>41</u> | <u>23</u> 311 |
| Social Assistance Review Board | 52 | 17 | 1 | 3 | 73 |

1
85
1

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|------------------------|-------------------------|-------------------|---|-------|
| Consumer and Commercial Relations | 25 | 46 | 2 | 8 | 81 |
| Liquor Control Board | 9 | 9 | 1 | | 19 |
| Liquor Licence Board | 1 | 9 | | | 10 |
| Ontario Racing Commission | | 7 | | 2 | 9 |
| Ontario Securities Commission | 4 | 4 | | 1 | 9 |
| Pension Commission of Ontario | 1 | 3 | | | 4 |
| Residential Tenancy Commission | 1 | 1 | | | 2 |
| Residential Premises Rent Review Board | 3 | 8 | | | 11 |
| Correctional Services | 5 | 39 | 1 | 2 | 47 |
| Correctional Centres | 240 | 465 | 28 | 34 | 767 |
| Detention Centres | 313 | 595 | 36 | 28 | 972 |
| Jails | 151 | 490 | 15 | 20 | 676 |
| Community Resource Centres | | 1 | | | 1 |
| Total | 709 | 1590 | 80 | 84 | 2463 |
| Ontario Board of Parole | 9 | 15 | | 1 | 25 |
| Culture and Recreation | 12 | | | 1 | 13 |
| Ontario Lottery Corporation | 1 | 2 | | 1 | 4 |
| Education | 15 | 21 | 5 | 3 | 44 |
| Ontario Institute for Studies in Education | | 1 | | | 1 |
| Teacher's Superannuation Commission | 2 | 1 | | | 3 |
| Energy | 2 | 2 | | | 4 |
| Ontario Energy Board | | | | 1 | 1 |
| Ontario Hydro | 32 | 24 | 4 | 1 | 61 |

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | REQUESTS/ SUBMISSIONS | TOTAL |
|--|------------------------|-------------------------|-------------------|--------------------------|-------|
| Environment | 60 | 24 | 1 | 3 | 88 |
| Environmental Assessment Board | 14 | | | | 14 |
| Government Services | 22 | 11 | 1 | 2 | 36 |
| Public Service Superannuation Board | 14 | 2 | 1 | | 17 |
| Health | 20 | 30 | | 10 | 60 |
| Psychiatric Hospitals | 66 | 45 | 14 | 9 | 134 |
| O.H.I.P. | 26 | 31 | 3 | 6 | 66 |
| Total | 112 | 106 | 17 | 25 | 260 |
| Alcoholism and Drug Addiction | 1 | | | | 1 |
| Research Foundation | | | | | |
| Board of Directors of Chiropractic | 2 | 1 | | | 3 |
| Board of Funeral Services | 1 | | | | 1 |
| Clarke Institute of Psychiatry | | 2 | | | 2 |
| Funeral Services Review Board | 1 | 1 | | | 2 |
| Health Disciplines Board | 21 | 4 | 3 | | 28 |
| Review Board for Psychiatric Facilities | 1 | | | | 1 |
| Municipal Affairs and Housing | 12 | 26 | 1 | 3 | 42 |
| Local Housing Authorities | 2 | | | | 2 |
| Ontario Housing Corporation | 23 | 35 | 4 | 5 | 67 |
| Ontario Land Corporation | 1 | | | | 1 |
| Ontario Mortgage Corporation | 3 | | | | 3 |
| Industry and Tourism | | | | | |
| Ontario Development Corporation | 3 | 6 | | | 9 |
| Northern Ontario Development Corporation | 1 | 1 | | | 1 |
| Intergovernmental Affairs | 5 | 6 | | 1 | 12 |

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|------------------------|-------------------------|-------------------|---|-------|
| | | | | | |
| Labour | 22 | 40 | | 5 | 67 |
| Employment Standards - Panel of Referees | 2 | 1 | | 1 | 4 |
| Ontario Human Rights Commission | 18 | 32 | | 3 | 53 |
| Ontario Labour Relations Board | 10 | 12 | | 1 | 23 |
| Workmen's Compensation Board | 522 | 693 | 15 | 66 | 1296 |
| Natural Resources | 49 | 32 | 9 | 9 | 99 |
| Northern Affairs | 3 | | | | |
| Ontario Northland | 1 | | 1 | 1 | 5 |
| Transportation Commission | | | | | 1 |
| Revenue | 32 | 114 | 8 | 15 | 169 |
| Solicitor General | 6 | 8 | | | 14 |
| Animal Care Review Board | 1 | | | 1 | 2 |
| Boards of Commissioners of Police | | 2 | | | 2 |
| Coroner's Council | 3 | 1 | 1 | | 5 |
| Ontario Police Commission | 12 | 8 | | | 20 |
| Ontario Provincial Police | 16 | 44 | 1 | 1 | 62 |
| Transportation and Communications | 99 | 105 | 5 | 19 | 228 |
| Ontario Highway Transport Board | 1 | 3 | | | 4 |
| Treasury and Economics | | 2 | | | 2 |
| Ontario Municipal Employees Retirement Board | 8 | | | | 8 |
| Government of Ontario-Other | | | | | |
| Management Board | | 2 | | 1 | 3 |
| Civil Service Commission | 1 | 1 | 1 | 1 | 4 |
| Grievance Settlement Board | 2 | | | | 2 |
| Public Service Grievance Board | 1 | | | | 1 |

| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | REQUESTS/ SUBMISSIONS | TOTAL |
|--|------------------------|-------------------------|-------------------|--------------------------|-------|
| Niagara Escarpment Commission | 1 | 4 | | | 5 |
| Office of the Assembly | | 1 | | | 1 |
| Office of the Premier/Cabinet Office | | 1 | | 1 | 2 |
| Office of the Ombudsman | | 55 | | 118 | 173 |
| Provincial Secretariat for Justice | | 1 | | | 1 |
| Provincial Secretariat for Social Development | 1 | | | 1 | 2 |
| Executive Council | | 1 | | | 1 |
| Ontario Government-Other | | 13 | | 4 | 17 |
| Government of Ontario Total | 2197 | 3511 | 187 | 452 | 6347 |
| <u>Courts</u> | | | | | |
| | | | | | 1 |
| Total | | 245 | | 13 | 258 |
| | | 245 | | 13 | 258 |
| | | | | | 1 |
| <u>FEDERAL GOVERNMENT</u> | | | | | |
| <u>DEPARTMENT/AGENCIES</u> | | | | | |
| Air Canada | | 2 | | | 2 |
| Canadian Penitentiary Services | | 3 | | | 3 |
| Federal Penitentiaries | | 17 | | | 17 |
| Central Mortgage and Housing | | 6 | | 1 | 7 |
| Consumer and Corporate Affairs | | 11 | | 2 | 13 |
| Employment and Immigration | | 182 | | 15 | 197 |
| Health and Welfare | | 97 | | 21 | 118 |
| Indian Affairs and Northern Development | | 5 | | 5 | 10 |
| Justice | | 1 | | | 1 |
| National Parole Board | | 2 | | 1 | 3 |
| Post Office | | 22 | | 2 | 24 |
| Public Works | | 1 | | | 1 |
| Revenue Canada - Taxation | | 58 | | 10 | 68 |

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|------------------------------------|------------------------|-------------------------|-------------------|---|-------|
| Royal Canadian Mounted Police | | 10 | | | 10 |
| Transport | | 3 | | | 3 |
| Veterans' Affairs | | 15 | | 1 | 16 |
| Federal Government - Other | | 66 | | 16 | 82 |
| Total | | 501 | | 74 | 575 |
| PRIVATE | | | | | |
| Associations/Groups | | 93 | 1 | 13 | 107 |
| Children's Aid Society | | 22 | | 3 | 25 |
| Catholic Children's Aid Society | | 5 | | | 5 |
| Complaint Bureaus | | 1 | | | 1 |
| Doctors - Patients | | 58 | | 7 | 65 |
| Hospitals | | 41 | | 4 | 45 |
| Lawyers - Clients | | 226 | | 46 | 272 |
| Law Society of Upper Canada | | 73 | | 5 | 78 |
| College of Physicians and Surgeons | | 6 | | 1 | 7 |
| Private Business | | 803 | 3 | 59 | 865 |
| Private Individual | | 248 | | 25 | 273 |
| Universities - Private | | 15 | | 2 | 17 |
| Member of Parliament | | 6 | | 1 | 7 |
| Private - Other | | 397 | | 123 | 520 |
| Total | | 1994 | 4 | 289 | 2287 |

1 90 1

MUNICIPALITIES/LOCAL AUTHORITIES

| | | | | |
|----------------------------------|----|--|---|----|
| Municipal Conservation Authority | 2 | | | 2 |
| Municipal Boards of Education | 34 | | 6 | 40 |
| Municipal Fire Department | 3 | | | 3 |
| Municipal Garbage | 2 | | | 2 |
| Municipal Governing Body | 38 | | 4 | 42 |
| Municipal Housing | 20 | | 1 | 21 |
| Municipal Hydro | 12 | | | 12 |
| Municipal Parks/Recreation | 3 | | | 3 |
| Municipal Planning Boards | 14 | | 5 | 19 |

WITHIN
JURISDICTION
 OUTSIDE
JURISDICTION
 NOT
DETERMINED
 REQUESTS/
SUBMISSIONS
 TOTAL

Municipal Police
 Municipal Public Health
 Municipal Roads
 Municipal Sewers
 Municipal Taxes
 Municipal Transit
 Municipal Water
 Municipal Welfare
 Committees of Adjustment
 Municipal - Other
 Total

| | | | |
|-----|---|----|-----|
| 194 | 2 | 7 | 203 |
| 2 | | 1 | 3 |
| 24 | | 3 | 27 |
| 13 | | 2 | 15 |
| 38 | | 3 | 41 |
| 4 | | | 4 |
| 8 | | | 8 |
| 59 | | 3 | 62 |
| 3 | | | 3 |
| 109 | | 18 | 127 |
| 582 | 2 | 53 | 637 |

INTERNATIONAL

Total

11
 11

2
 2

13
 13

OTHER PROVINCES

Total

25
 25

4
 4

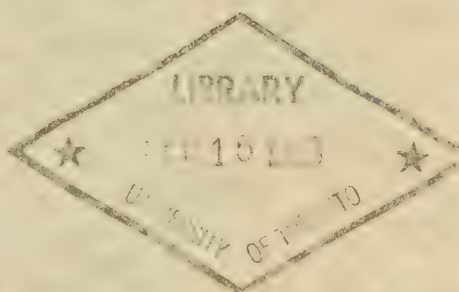
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COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| NO ORGANIZATION SPECIFIED | COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION | | | INFORMATION REQUESTS / SUBMISSIONS | TOTAL |
|---------------------------|---|-------------------------|------------------------|--|------------------------|
| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | | |
| Total | <u> </u> | <u>37</u> <u>37</u> | <u>10</u> <u>10</u> | <u>15</u> <u>15</u> | <u>62</u> <u>62</u> |
| OVERALL TOTAL | <u>2197</u> | <u>6906</u> | <u>203</u> | <u>902</u> | <u>10208*</u> |

*This figure exceeds the number of closed complaints (10175) because some complaints involved more than one organization.

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TENTH REPORT

The Ombudsman | Ontario

APRIL 1, 1982 - MARCH 31, 1983



TENTH REPORT

The Ombudsman | Ontario

APRIL 1, 1982 - MARCH 31, 1983



The Ombudsman | Ontario

HON. DONALD R. MORAND

125 QUEEN'S PARK, TORONTO, ONTARIO
M5S 2C7
TELEPHONE (416) 596-3300

June 25th, 1983

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Mr. Speaker:

It is with pleasure that I present the Tenth Annual Report of the Ombudsman for the period April 1, 1982 to March 31, 1983.

This report is submitted pursuant to Section 12 of the Ombudsman Act.

Yours very truly,

Donald R. Morand

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| Ministry of Municipal Affairs and Housing | 69 |
| Ministry of Revenue | 80 |
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PREFACE

After over four and one-half years as Ombudsman of Ontario I wish to take a short while to reflect on the time I have spent serving the citizens of this fine province.

Leaving the Supreme Court of Ontario to become the second Ombudsman posed a challenge never before presented to me and one which caused some grave concerns. I was following a tradition established by a high-profile defence attorney, a man well-known to almost every household in Ontario. At first blush I was tempted to refuse the appointment. Upon reflection, I can honestly say my term in Office brought home to me the great service the Office brings to you, the citizens.

Too frequently we are prone to criticize our governmental organizations as being too bureaucratic, too cumbersome and far too insensitive to the needs of the citizenry. On the contrary, we in Ontario are blessed with a strong, understanding and sympathetic democracy. Throughout my dealings with the various Ministries, boards, agencies and commissions I was constantly surprised at the dedication and total cooperation of the civil servants. My meetings with all levels of government and with the elected representatives of all three parties took place in an atmosphere of support, openness and conciliation.

My success as Ombudsman was also due in large measure to my fine staff. These men and women, investigators and lawyers, clerical staff and support staff, accepted the challenges ungrudgingly. They travelled throughout the province to ensure justice would prevail. They accepted my philosophies without question and instilled in each other the pride necessary to accomplish their goals.

At the outset I often wondered whether an Ombudsman could be of benefit to a complainant. Shortly after taking Office I was convinced of the importance of this great institution and I encourage my replacement to continue the fine work commenced with the founding of the Ombudsman's office.

I learned very quickly the importance of meeting my counterparts throughout the world. I benefited, as did my staff, by attending at their offices, talking with their

employees and exchanging thoughts and ideas. Likewise I, as a Director of the International Ombudsman Institute, was able to impart Ontario's successes to other Ombudsmen. My attendance, along with certain members of my staff, at Ombudsman conferences, kept the Ontario Office of the Ombudsman in the forefront. It allowed us the privilege of comparing our operation with others, confirming the fact that your Office, the Ontario Office of the Ombudsman, is, in my opinion, without a doubt the finest, most efficient office in existence. It must be kept that way and I urge my successor to become involved in the international aspect of Ombudsmanship.

One of my first tasks upon taking office was to reorganize the workflow and establish priorities within the various Directorates. Certain areas received additional strength in management deployment, while others were amalgamated. Our backlog was in an unmanageable position and the current work in progress (open files receiving attention) was increasing at an alarming rate. Constant nurturing and supervision reduced the backlog of those investigations which had been in progress within our Office for more than thirty-three months from 157 to 17, at this year's fiscal year end. Similarly, our work in progress was reduced from 2,714 investigations to an all time low of 1,086, accomplished without sacrificing quality for quantity. Throughout this entire time, our intake of complaints and information requests remained relatively stable, at approximately 10,000 each year.

Frequently my Office receives complaints which do not fall within my jurisdiction. The complainants are given every assistance through our referral system. The drafters of the Ombudsman Act are also to be congratulated for their thorough approach as to how an Ontario Ombudsman shall conduct his or her affairs. In only two instances did I find it necessary to approach the Courts to determine our jurisdiction. However, there are areas within the present Act which should be amended, and with this in mind I submitted my recommended amendments to the authorities for consideration. Hopefully, in the not too distant future, these amendments will be received favourably.

The drafters of the Act in their wisdom were careful to ensure the independence of the Ombudsman and enshrined this independence in the Ombudsman Act. This granted me the authority to hire my own staff and conduct the affairs of the Office without interference from the elected officials. I am not without scrutiny. My budget is approved by the Board of Internal Economy; my Office is audited

yearly by the Provincial Auditor; I appear before the Standing Committee on General Government and the Standing Committee on Public Accounts for a review of office procedures and expenditures. Along with the above, my annual report is presented to the House, and the Select Committee on the Ombudsman has the mandate to review and make recommendations to the House based on this annual report. More recently, the Legislature has seen fit to expand the mandate of the Select Committee, enabling that Committee to also review my budget. I can only caution against any attempts to erode the independence of the Office. If this were to happen then the citizens of Ontario would suffer and the effectiveness of the Office would be greatly diminished. Each Committee can be and has been a benefit to the Office, but each must appreciate the role and function the Ombudsman of Ontario is called upon to perform. It is his or her mandate to investigate complaints against governmental organizations unimpeded, and any interference, regardless how small, will undermine the Ombudsman's effectiveness.

It is my fervent hope that the past cooperation between my Office and the various Committees continues. Differences will arise; this is normal. However, differences which tend to minimize the importance and effectiveness of the Office serve no purpose and can only, in the long run, destroy the independence of the Office.

The future for the Office of the Ombudsman of Ontario shines brightly. I wish my successor well and trust he or she will receive the support of all governmental organizations which I received and treasured throughout my years in service.

INTRODUCTION

Concentrating on the past fiscal year, 1982/83, I am pleased to comment on our successful completion of the longstanding North Pickering investigation.

Some 110 complainants (former landowners) complained to the Ombudsman about the circumstances of the sale of their land to the Province of Ontario for the North Pickering Community Development Project, later to become known as the North Pickering Project. The majority of these complaints were brought to our Office in 1976, while others were received at an earlier date. Hearings under oath were conducted on a total of 387 days, resulting in well over 80,000 pages of recorded transcripts. In mid-November 1981, I was presented with a five-volume report of approximately 3,000 pages constituting a review of the investigation. From these volumes, I was able to formulate my tentative conclusions and recommendations and offer them to the now Minister of Municipal Affairs and Housing. Several months of discussions subsequently culminated in an equitable way of resolving the landowners' claims for compensation, excepting those landowners who had been characterized as "investors". I remain of the view that this group of former landowners, deemed to be "investors", should not have been excluded from the compensation scheme offered by the Ministry of Municipal Affairs and Housing. Accordingly, I have further reported on this group of cases in the form of a "Recommendation Denied" detailed summary under Chapter 2, page 69 of this report.

Also, during the past fiscal year, the Office was instrumental in resolving complaints concerning the registration of the Remor Investment Management Corporation by the Registrar of Mortgage Brokers of the Ministry of Consumer and Commercial Relations. The complainants, many of whom lost their life savings in the corporation's collapse, contended maladministration on the part of the Registrar in the licensing of the Remor Investment Corporation. At the conclusion of the investigation, the Minister accepted, in total, my recommendations which, in my opinion, resulted in a fair settlement to those investors affected. Total financial losses to investors have been estimated at \$6.6 million.

Both of these matters noted above involved many very complex issues whose resolution required an exceptional amount of time and diligence on the part of my Office and

the governmental agencies which were the subject of the investigation.

I remain of the view that it is important to address the root causes of complaints, as well as individual complaints one at a time. Let me refer to one matter involving the Social Assistance Review Board of the Ministry of Community and Social Services.

I have made repeated recommendations to the Ministry of Community and Social Services regarding the submissions of the Director of Income Maintenance to the Social Assistance Review Board. It has been my view for some time that in family benefits appeals, the submissions of the Director failed to adequately advise the Social Assistance Review Board of all the information the Director had before him when he made his decision to deny an individual assistance. This lack of information appeared to be the root cause of difficulties in cases which involved applications for assistance on medical grounds, in particular. In several cases, I advised the Director of Income Maintenance that he should provide the Social Assistance Review Board with a comprehensive picture of all the evidence which had been provided to him, and upon which he had made his findings as to eligibility in all cases where an appeal had been taken. Accepting that the Director of Income Maintenance was vested with discretion insofar as his written submissions were concerned, it was my view that he should exercise that discretion judicially and that he ought reasonably to provide the Board with a fair account of the evidence which was before him when he made his decision.

I am pleased to note that the recently appointed Director of Income Maintenance has responded to my concerns by indicating his agreement with my view that it is only reasonable and just for the Director to provide the Review Board with a fair account of the evidence which was available to him when he made his decision. He also advised that the current practice is to provide more detailed summaries of the evidence in the Director's submission to the Social Assistance Review Board. Recent cases which have come to my attention do appear to include more complete submissions by the Director.

I congratulate the Director of Income Maintenance on his willingness to initiate such an important procedural improvement. Cooperation such as this makes my task less difficult.

In my Ninth Report I outlined the chronology of events pertaining to my investigation of 135 cases relating to how the Workers' Compensation Board assesses workers for permanent disability awards under section 42(1) [now section 43(1)] of the Workers' Compensation Act. Although the Select Committee on the Ombudsman supported my interpretation of section 42(1), the then Minister of Labour preferred a different legal opinion which supported the Board's interpretation of section 42(1). Ultimately, the Legislature agreed with the Minister's position and did not accept the Select Committee's recommendation.

Since the 135 cases were not to be reconsidered by the Board, during the Select Committee hearings in September 1981, I volunteered to investigate those cases further. My purpose was to determine if the level of permanent disability assessed by the Board for each worker was reasonable in view of the medical findings.

In September 1982, I advised the Select Committee that 126 of the total 135 cases had been closed. Of the remaining nine cases, three recommendations were made to the Board, all of which were accepted. Five of the cases were not supported; however, in one case we discovered an administrative error concerning the payment of arrears and it was rectified by the Board. The final complainant chose to ask the Board for a reconsideration and asked me to discontinue my investigation.

During this reporting period all 135 cases relating to section 42(1) of the Workers' Compensation Act were closed.

In my last report, the Ninth Report of the Ombudsman, I made mention of the fact that we have increased our efficiency so that we can place appropriate emphasis on our primary function of investigating complaints within our jurisdiction, while still being able to respond effectively to the large number of non-jurisdictional complaints the Office receives each year. We have accomplished this even though our intake of work has remained approximately the same or has increased slightly over the years.

As I have already stated in the preface to this report, my first task upon taking office was to reorganize the work flow and establish priorities within the various directorates so as to reduce an unmanageable backlog and the current work in progress, which was increasing at an alarming rate. It appears that the steps this Office has implemented to remedy the backlog of files and reduce in-progress work are now beginning to pay dividends.

For instance, the volume of work received by my Office has remained relatively the same during my term. More recently, during this reporting period, the volume has increased. Nonetheless, my Office has been able to significantly reduce the number of investigations carried over at year end to 1,086 from 1,457 investigations the previous fiscal year -- a 25% decrease. More importantly, over the past four years, the number of in-progress investigations carried over at year end has been reduced by 60% from the peak of 2,714 investigations in progress on March 31, 1980. The figure of 1,086 in-progress investigations carried over at this year end is now, in fact, the lowest number since the Office was instituted in 1975.

The trend towards a reduced number of in-progress investigations carried over at year end is graphically illustrated on page 13. The graph shows that the peak of 2,714 in-progress investigations on March 31, 1980 was reduced to 1,634 in-progress investigations on March 31, 1981. A further reduction to 1,457 in-progress investigations occurred on March 31, 1982. This figure was again reduced by 25% to 1,086 in-progress investigations at March 31, 1983.

Not only has my Office been successful in reducing its number of in-progress investigations carried over at year end, we have also been able to reduce the time in which those investigations have remained in progress. In this regard, I am pleased to state that we have further reduced the carryover of investigations with a time span in excess of 33 months from 157 investigations on March 31, 1982 to 17 investigations on March 31, 1983. The remaining 17 investigations, which include three North Pickering cases undergoing further review by the Ministry, involve complex factual and legal issues. The ability of my Office to maintain manageable case load levels while ensuring that the lengthier cases are not carried over from year to year is the critical factor in ensuring further improvements in our efficiency.

I am pleased to report that the statistics included herein demonstrate that my Office is continuing to make significant progress in terms of more effective and timely service to the citizens of Ontario. Figures pertaining to the volume of complaints received, the number of complaints closed, and the year end carryover of in-progress investigations all reflect a positive trend compared to previous years.

Specifically during this reporting period, April 1, 1982 to March 31, 1983, my Office received 10,754 complaints and information requests. This figure is 12.4% higher than the previous year and is the highest figure over the past four years.

This year, the volume of complaints and information requests closed increased from 10,175 to 11,801 compared with the previous fiscal year.

The majority of these complaints and information requests were closed within several months of their receipt by my Office. In actuality, 73.3% or 8,656 were fully handled within one month. 86.6% or 10,228 were closed within six months, and only 7.8% or 921 took longer than one year to close. In terms of actual numbers, more complaints and information requests were closed within each of these time spans compared with the previous fiscal year.

This year I have carried out my intention, as outlined in my Ninth Report, to report statistical information in a simpler fashion, based on the number of complaints dealt with by my Office. Also, in keeping with earlier statements that I have made to the Select Committee in September, 1982 and in a subsequent letter to the Chairman of that Committee, my Office has discontinued expressing "average duration to closing" statistics. I explained that this term has been a source of misinterpretation and does not accurately reflect the time required by my Office to close complaints. Instead, duration-to-closing is expressed by the number of complaints closed within a given period of time. The chart found on page 14 illustrates duration-to-closing information for the fiscal year 1982/83 along with other statistical highlights contained in this report. Unlike previous years, our statistics now account for multiple allegation complaints.

While speed in investigations is important, it would be tragic if our humanity were set aside in the drive for efficiency. In an Ombudsman's office there must be human contact between investigators and complainants, and between investigators and government officials, so that even if the result of the investigation is disappointing to either side, the process itself is not. Both complainant and government must feel that they were truly heard by the Ombudsman.

Human contact takes time. Real discussion of difficult issue takes more time. But if we forget the importance of taking the time, then the real value of the Ombudsman idea will have been lost.

REGIONAL OFFICES

On June 15, 1979, our first regional office was established in Thunder Bay, as it is the centre of far north-west Ontario and those remote regions which have the most difficulty being serviced by the main office in Toronto. A second regional office was subsequently opened in 1981 in North Bay. Operation of both offices has proved to be successful and cost-efficient, rendering excellent service to the north central and northwest portions of the province.

A third regional office in Ottawa has been opened unofficially as of March 31, 1983. An official opening date has been scheduled for late May, 1983.

The Ottawa office will service the east and northeast part of the province and complete the west-to-east bridge of Ombudsman regional offices. Geographically, this office services a population of approximately 1.3 million people, covering some 19 electoral districts. In addition, 10 provincial correctional facilities and two psychiatric hospitals will also be serviced by staff from the Ottawa regional office. Based on the number of complaints emanating from this geographical region, studies show that it is cost-efficient to open a regional office rather than sending hearings officers and investigators on a regular basis from Toronto into that region.

PRIVATE HEARINGS

I remain of the view that it is essential for the Office of the Ombudsman to be as accessible as possible to all the people of Ontario regardless of where they reside. In keeping with this objective, staff members from the Toronto Office and our regional offices in both Thunder Bay and North Bay collectively visited a total of 79 communities province-wide during this reporting period. In total, our staff received 1,211 complaints and information requests in the course of these hearings.

I am confident that the private hearings conducted by the newly-established Ottawa regional office will augment the accessibility of the Office of the Ombudsman to the citizens of eastern Ontario.

In my Eighth Report, I reported that the Office altered its hearings schedule and focused on visiting the smaller communities so that our staff could devote more of their efforts to clearing up a rather large case load. During the ninth reporting period, and again during this reporting period, the Office returned to visiting the larger centres in the province. While only slightly fewer complaints were received this year over last year, the budget for the hearings remained approximately the same. This is, in part, due to the fact that hearings conducted in the north by our staff members from the regional offices are supplemented with staff from the Toronto office only when necessary.

| <u>Date</u> | <u>Location</u> | <u>No. of Complaints and Info. Requests Received</u> | <u>No. of Interviews Conducted</u> |
|-------------|----------------------|--|------------------------------------|
| <u>1982</u> | | | |
| April | 1 Smith Falls | 13 | 11 |
| | 5/6 Sudbury | 34 | 33 |
| | 14 White River | 1 | 1 |
| | 15 Marathon | 2 | 2 |
| | 20 Bancroft | 7 | 7 |
| | 21 Barry's Bay | 8 | 6 |
| | 22 Huntsville | 16 | 16 |
| May | 4 Beardmore | 2 | 2 |
| | 5 Longlac | 3 | 3 |
| | 5/6 Sault Ste. Marie | 11 | 11 |
| | 6 Geraldton | 2 | 2 |
| | 11 Welland | 9 | 7 |
| | 12 St. Catharines | 57 | 51 |
| | 19 Armstrong | 7 | 6 |
| June | 1 Port Elgin | 6 | 6 |
| | 1 Schreiber | 2 | 2 |
| | 2 Owen Sound | 15 | 15 |
| | 2 Nipigon | 1 | 1 |
| | 2/3 Timmins | 25 | 25 |
| | 3 Collingwood | 13 | 12 |
| | 4 Kirkland Lake | 15 | 15 |
| | 22 Barrie | 18 | 18 |
| | 23 Orillia | 24 | 24 |
| | 24 Gravenhurst | 15 | 15 |
| July | 13 Red Lake | 7 | 7 |
| | 14/15 Kenora | 9 | 8 |

| <u>Date</u> | <u>Location</u> | <u>No. of Com- plaints and Info. Requests Received</u> | <u>No. of Interviews Conducted</u> |
|-------------|------------------|--|--|
| July 14/15 | Windsor | 63 | 60 |
| Aug. 24 | Hawkesbury | 18 | 13 |
| 25/26 | Ottawa | 39 | 33 |
| Sept. 8/9 | Sault Ste. Marie | 12 | 11 |
| 14 | Sarnia | 25 | 21 |
| 14/15 | Fort Frances | 3 | 3 |
| 15 | Grand Bend | 5 | 5 |
| 16 | Goderich | 16 | 16 |
| 16 | Rainy River | 11 | 8 |
| Oct. 5 | Cambridge | 14 | 14 |
| 6/7 | Sudbury | 33 | 30 |
| 6/7 | Kitchener | 18 | 17 |
| 7 | Pickle Lake | 2 | 2 |
| 8 | Savant Lake | 2 | 2 |
| 19 | Sioux Lookout | 7 | 6 |
| 20 | Dryden | 3 | 3 |
| 21 | Ignace | 6 | 6 |
| 26 | Belleville | 28 | 27 |
| 27/28 | Kingston | 44 | 42 |
| Nov. 9 | Elliot Lake | 22 | 21 |
| 10 | Sault Ste. Marie | 15 | 14 |
| 16 | Manitouwadge | 6 | 3 |
| 16 | Guelph | 11 | 10 |
| 17/18 | Hamilton | 37 | 35 |
| 18 | Terrace Bay | 5 | 4 |
| 20 | Vermilion Bay | 2 | 2 |
| Dec. 1/2 | Kenora | 4 | 4 |
| 7/8 | Sudbury | 30 | 30 |
| 9 | Hudson | 1 | 1 |
| 14 | Chatham | 33 | 33 |
| 15/16 | Windsor | 41 | 40 |
| <u>1983</u> | | | |
| Jan. 11 | Nipigon | 7 | 7 |
| 13 | Marathon | 6 | 6 |
| 18 | St. Thomas | 17 | 17 |
| 19/20 | London | 54 | 54 |
| 26 | Nestor Falls | 1 | 1 |

| <u>Date</u> | <u>Location</u> | <u>No. of Com- plaints and Info. Requests Received</u> | <u>No. of Interviews Conducted</u> |
|-------------|---------------------|--|--|
| Jan. 27 | Sioux Narrows | 1 | 1 |
| Feb. 8 | Fenelon Falls | 5 | 4 |
| 8 | Atikokan | 6 | 6 |
| 9 | Lindsay | 19 | 18 |
| 9/10 | Fort Frances | 2 | 2 |
| 10 | Peterborough | 41 | 37 |
| 15 | Kapuskasing | 3 | 3 |
| 16 | Cochrane | 6 | 5 |
| 17 | Timmins | 21 | 20 |
| 18 | New Liskeard | 7 | 7 |
| March 1 | Port Colborne | 16 | 15 |
| 2 | Simcoe | 19 | 19 |
| 3 | Tillsonburg | 22 | 21 |
| 3 | Minaki | 1 | 1 |
| 22/23 | St. Catharines | 27 | 25 |
| 24 | Niagara-on-the-Lake | 21 | 19 |
| 29/30 | Sudbury | 31 | 30 |
| | | <u>1,211</u> | <u>1,140</u> |

VISITS TO INDIAN RESERVES AND SETTLEMENTS

It is important that the services of the Ombudsman of Ontario also be made available to our native population who live on the various Indian reserves and settlements throughout Ontario. During the past twelve months, staff in the Regional Services Directorate visited 13 reserves and settlements, concentrating on the greater number which are located in northern Ontario.

In many instances, our staff are required to fly into these locations in order to gain access. Due to the remoteness of these bands, personal contact with members of the Office is essential.

| <u>Date</u> | <u>Location</u> |
|-------------|-----------------------------|
| <u>1982</u> | |
| Dec. 8 | Eagle Lake Indian Reserve |
| 10 | Waigoon Band Indian Reserve |

| <u>Date</u> | | <u>Location</u> |
|-------------|----|----------------------------------|
| <u>1983</u> | | |
| Jan. | 24 | Seine River Indian Reserve |
| | 24 | Nicickousemenecaning Indian Band |
| | 24 | Couchiching Indian Reserve |
| | 25 | Northwest Bay Indian Reserve |
| | 26 | Big Island Indian Reserve |
| | 26 | Manitou Rapids Indian Reserve |
| March | 1 | Rat Portage Indian Reserve |
| | 1 | Shoal Lake #39 Indian Reserve |
| | 1 | Shoal Lake #40 Indian Reserve |
| | 2 | Kenora Reserve #38B |
| | 3 | Islington Indian Reserve |

COURT CASES

A judgment rendered by the Supreme Court of British Columbia held that the British Columbia Ombudsman did not have jurisdiction to investigate a complaint against the British Columbia Development Corporation (BCDC). The Ombudsman of British Columbia appealed this decision to the Court of Appeal of British Columbia, which decided on July 23, 1982 that the Ombudsman of British Columbia did, in fact, have authority to investigate the complaint. Subsequently, the BCDC appealed the decision of the British Columbia Court of Appeal to the Supreme Court of Canada. As the major issue before the Supreme Court of Canada is the jurisdiction of the British Columbia Ombudsman, and as our Office has twice had decisions of the Court of Appeal dealing with our jurisdiction, we are concerned that these two favourable decisions might be affected by the Supreme Court of Canada. Therefore, I obtained leave from the Supreme Court of Canada to intervene in this appeal. Leave to intervene was also obtained by the Ombudsmen of Saskatchewan and Quebec. No date has yet been set for this appeal, but it is anticipated it will be heard in the fall of 1983.

LEASE

In my Eighth Report, I stated that we had moved into our new premises located at 125 Queen's Park. A drastic increase in rental rates in the downtown area has demonstrated the wisdom of our move into this building which

has resulted in a substantial saving of several million dollars to the taxpayers of Ontario.

DETAILED SUMMARIES

As in previous reports of the Ombudsman, I have included an array of detailed case summaries of complaints which I feel would be of interest to our readers and reflect the type of work carried out by my Office. I recommend a few cases found on pages 15, 21, 46 and 56 which are particularly noteworthy. In Chapter 2, 32 detailed summaries are presented.

The preponderance of cases presented in this report involves matters in which we were able to be of assistance to the complainant. This might leave the reader with the false impression that we support the majority of complaints received by my Office. However, this is not the case. During this past fiscal year, 48.8% of complaints were resolved in favour of the complainant. This represents a 16% increase compared with the fiscal year 1981/82.

At the conclusion of this reporting period, March 31, 1983, there were 7 cases where my recommendations were not adopted by the respective governmental organizations. One deals with the Ministry of Consumer and Commercial Relations, found on page 29; three relate to the Ministry of Labour, Workers' Compensation Board, found on pages 58 to 64, another deals with the Ministry of Revenue on page 83; and another deals with the Ministry of Tourism and Recreation on page 80. On page 69, I have also presented the North Pickering complaints where the Ministry of Municipal Affairs and Housing refused to implement my recommendation pertaining to a particular group of complainants.

RECOMMENDATIONS DENIED AND

SECTION 22(3) (d) OR (e) RECOMMENDATIONS

When I considered the treatment of recommendation denied cases by the Select Committee on the Ombudsman during my tenure, I was on the whole satisfied. Naturally, I was disappointed that the Committee did not support my recommendations in a few cases. No one expects the Committee to rubber stamp the Ombudsman's recommendations.

I would however, remind the Committee of statements made by it on this subject in its Fifth Report:

...When it appears to the Committee that the Ombudsman has complied with the provisions of the legislation and where the governmental organization's response is not adequate, appropriate or reasonable to the Committee, it will prima facie support the Ombudsman's recommendation. When the Ombudsman was created in Ontario, the Legislature intended that a vehicle for the scrutiny of decisions of the public service would ultimately press the Legislature to redress the consequences of certain decisions considered by him to be warranted, within the context of the Ombudsman Act. If the Committee chose not to support a recommendation of the Ombudsman after it had satisfied itself as set out above, it would seriously undermine the effectiveness and credibility of the Ombudsman in the eyes of the people of the Province of Ontario and the members of the public service.

As a means of taking inventory of all cases since the inception of the Office of the Ombudsman where either: 1) a recommendation under s. 22(3) of the Ombudsman Act was denied by the governmental organization to which it was addressed, or 2) a recommendation was made pursuant to s. 22(3)(d) or (e) that a practice be altered or a law reconsidered, I have appended, in each Report since my Sixth Report, two charts. These charts, which in this Report appear as Appendices A and B at pages 96 to 109, summarize the recommendations made under the appropriate categories, and the disposition of these recommendations by the governmental organizations, and where appropriate, by the Select Committee on the Ombudsman. The charts summarize only cases outstanding as of March 31, 1983, that is, cases where it is anticipated that some further action will be taken either by the governmental organization or by the Select Committee.

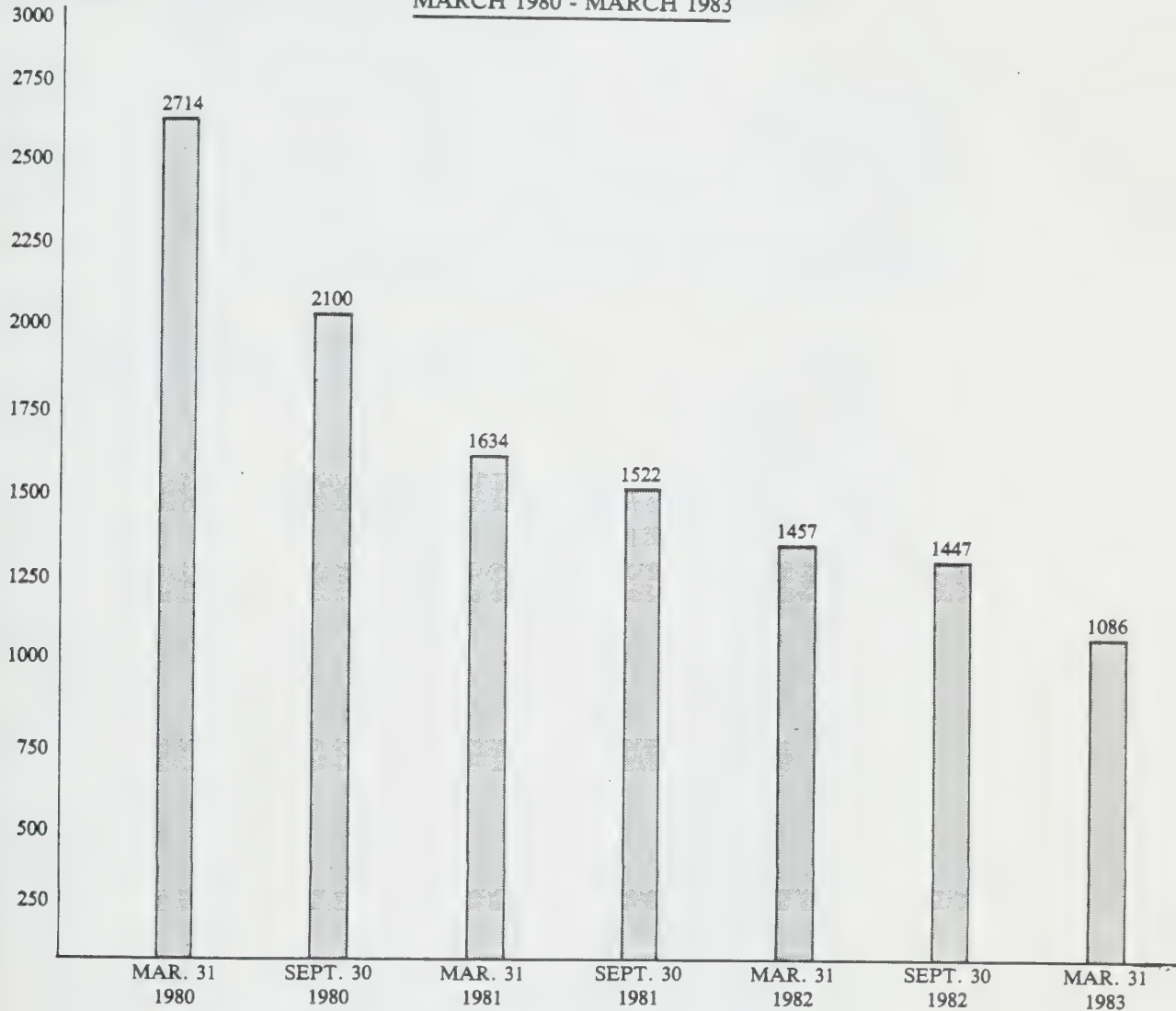
Since the Select Committee's Tenth Report on the Ombudsman had not been tabled at the time this reporting period concluded, several of these recommendations appear as "Not yet reported" by the Select Committee. It is anticipated that these recommendations will, however, be addressed by the Select Committee in its Tenth Report.

IN-PROGRESS INVESTIGATIONS CARRIED OVER AT YEAR END

MARCH, 1980 - MARCH, 1983

NO. OF FILES
IN PROGRESS

FILES IN PROGRESS ON THE DATES SHOWN
MARCH 1980 - MARCH 1983



The above histogram illustrates a 60% reduction of in-progress investigations at year end over a three-year time span — from a peak of 2,714 to 1,086 (or a reduction of 1,628 investigations).

STATISTICAL HIGHLIGHTS

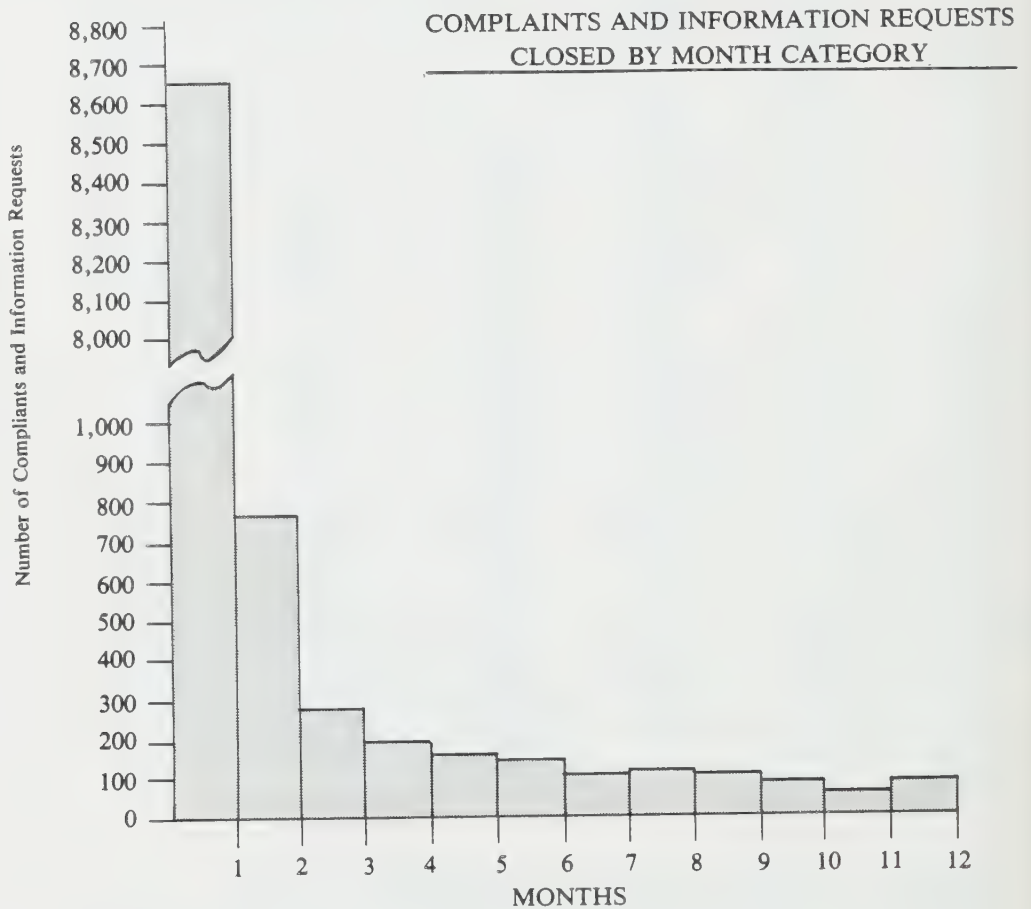
1982-1983 FISCAL YEAR

Total Complaints and Information Requests Received 10,754
Total Number of Investigations In Progress at Year End 1,086

CLOSED COMPLAINTS AND INFORMATION REQUESTS

| | Complaints Documented in Files | Fast Actions * | TOTAL |
|----------------------|--------------------------------|----------------|---------------|
| Within Jurisdiction | 2,764 | 1,696 | 4,460 |
| Information Requests | 271 | 1,990 | 2,261 |
| Outside Jurisdiction | 1,056 | 4,024 | 5,080 |
| TOTAL | 4,091 | 7,710 | 11,801 |

* "Fast Action" is the term used to describe the method of quickly handling less complex complaints and information requests without formally opening a file.



The above histogram covering a twelve-month period accounts for 92.2% of the 11,801 complaints and information requests closed by the Office between April 1, 1982 and March 31, 1983. A further 921 complaints of the total required more than 12 months to close.

CHAPTER TWO

DETAILED CASE SUMMARIES

DETAILED SUMMARY NO. 1

(NON-JURISDICTIONAL COMPLAINT)

On November 4, 1982, this individual contacted the Office of the Ombudsman at the suggestion of his federal member of parliament.

The complainant has a wife and two small children, one of whom is an eight-month-old baby. He was recently laid off from his job and was in receipt of welfare benefits until such time as his Unemployment Insurance benefits could be processed. The citizen, knowing about the impending layoff, had moved his family to less expensive housing on November 1, 1982. At the time of his call to the Ombudsman's Office, he had been unable to have the gas service connected to his house because the gas company was demanding a \$275 security deposit. General Welfare assistance guaranteed \$100 towards the deposit but would go no further. The complainant contacted his federal M.P. for assistance as he was not able to raise the remaining \$175. His M.P., in an attempt to assist the complainant, contacted the gas company and the local Welfare Administrator but was unsuccessful in rectifying the matter.

It was determined that the complainant had a good payment record. Therefore, in an effort to assist him, a number of informal inquiries were made on his behalf.

First, the Ombudsman's Office contacted the local Welfare Administrator, who clarified the situation by advising that the \$100 security deposit ceiling was established by municipal bylaw and Welfare could provide no more money for the security deposit without a change in the bylaw. The name and telephone number for the Regional Manager of the gas company were then obtained, and the situation was explained to the Regional Manager, who agreed to reduce the amount of the deposit by \$75. The Office tried contacting a community service organization to see if it kept funds for emergency situations, but was unsuccessful.

Subsequently, the complainant was advised of the reduction in the security deposit so that he could attempt to raise the \$100 required. In the meantime, he was assured that the Office would try to have the amount reduced further.

A further telephone call was made to the gas company's Regional Manager. After some discussion the Regional

Manager agreed to reduce the deposit by a further \$50, leaving the citizen with \$50 to pay. In the meantime, the complainant had managed to borrow \$100 from his father and immediately paid the security deposit. Connection of service was arranged immediately.

MINISTRY OF
COLLEGES AND UNIVERSITIES

DETAILED SUMMARY NO. 2

The complainant contacted the Ombudsman's Office requesting assistance regarding a student loan and expressing her dissatisfaction with a decision of the Ministry of Colleges and Universities. She had received a letter from a solicitor at the Ministry of Government Services advising her that her Ontario Student Assistance Program debt of \$1,410 would be collected by the Ministry of Government Services. The solicitor stated that the Ministry of Government Services wanted to collect the \$1,410 from the complainant because this amount constituted the balance due on the difference between the amount of money the complainant received under OSAP in 1979-1980 and the amount of money she was entitled to receive. This came about as a result of a reassessment of her financial resources.

The reassessment indicated that the complainant was allowed OSAP funds which were \$1,410 in excess of her actual financial needs because the Ministry of Colleges and Universities believed that her parents' income had been underestimated. Therefore, she was requested to repay the excess (\$1,410).

The complainant's father contacted his M.P.P. in regard to this matter. He explained that the reassessment of parental income occurred because his and his wife's RRSP's were purchased in the tax year of 1975 and cashed in December, 1979. His actual income was \$14,300 (\$13,000 had been the projected estimate), but because he and his wife felt that it would be better to budget their pension income, they decided to discharge all debts. Therefore, they cashed in their RRSP's a month too soon, and thus jeopardized the complainant's grant, on which she was dependent.

In accordance with the provisions of the Ombudsman Act, the Ministry of Colleges and Universities was advised of the complainant's concerns regarding her debt. The Ministry was invited to comment on her contentions and shortly thereafter this Office received a reply from the Manager of Appeals of the Ministry of Colleges and Universities. The Manager stated that if the complainant were to document her parents' obligations and reasons for cashing in their RRSP's, the Ministry would be willing to reconsider her case.

The complainant forwarded correspondence to the Ombudsman's Office explaining that her parents used their

RRSP's to pay off their debts, and that her father, who was in his late 60's, had had three heart attacks which resulted in open-heart surgery in mid-October of 1981. As her parents had moved, it was difficult for them to locate documentation of the 1979-80 expenses. Subsequently, at the request of the Ombudsman's Legal Director, the complainant's mother wrote to the Ombudsman explaining why the RRSP had to be cashed; additional information specific to actual expenses was obtained.

The Ombudsman forwarded this information to an official of the Legal Branch at the Ministry of Government Services, outlining the chronology of events and the purposes for which the RRSP money was used. A request was then made on the complainant's behalf to forgive her debt of \$1,410. Shortly thereafter a reply was received from a solicitor at the Ministry of Government Services, enclosing copies of correspondence within that Ministry and stating that the complainant's debt was cancelled. Accordingly, the file was closed as the matter had been resolved for the complainant.

MINISTRY OF
COMMUNITY AND SOCIAL SERVICES

DETAILED SUMMARY NO. 3

This complainant first made his concerns known to the Ombudsman's Office during a personal interview on June 16, 1981. At that time he was complaining about a decision rendered by the Social Assistance Review Board, affirming an earlier decision of the Director of Family Benefits to deny him reclassification as a disabled person within the meaning of the Family Benefits Act.

The complainant was receiving a Family Benefits allowance as a permanently unemployable person. He stated that, originally, he was unaware that there were two categories under which an applicant may be entitled to receive benefits. He alleged that communication between the Ministry and applicants/recipients was insufficient.

The Ombudsman notified both the Ministry of Community and Social Services and the Social Assistance Review Board of his intent to investigate this complaint and requested a statement of their positions in response to the complainant's allegation. The Ministry replied that, on the strength of the medical opinions rendered by its Medical Advisory Board, the complainant was a permanently unemployable person, but could not be considered disabled. The Social Assistance Review Board responded that, inasmuch as the facts and evidence adduced at the hearing did not support the complainant's contention that he should be reclassified, the Board's decision had been correct.

During the course of the investigation, the Office reviewed the files maintained on this matter by both the Ministry and the Board. Information contained in the Board's file indicated to the Ombudsman that the Board's decision had not been unreasonable. It appeared that the Board had not been provided with objective medical findings which would support the complainant's appeal for reclassification.

Information contained in the Ministry's file, however, indicated that there were certain medical opinions available to it at the time of the complainant's appeal hearing which it had not presented to the Board. The investigation also confirmed the complainant's contention that information concerning the legislative definition of the classifications in question was not made available to him.

Accordingly, the Ombudsman wrote to the Ministry and the Board to outline his tentative conclusion that the Director of Family Benefits had unreasonably omitted to

provide the complainant with specific information concerning his possible entitlement to Family Benefits as a disabled person. The Ombudsman also advised that he had tentatively concluded that the Director of Family Benefits ought to make a new submission to the Board which ought to include all relevant information, including the opinions of the complainant's physicians. Finally, the Ombudsman advised that the Ministry had unreasonably omitted to provide the complainant with acknowledgement letters upon its receipt of new information from his physicians. The Ministry's failure to do so had caused the complainant a great deal of confusion.

In light of these tentative conclusions, the Ombudsman tentatively recommended that the Ministry request a new hearing before the Social Assistance Review Board on the complainant's behalf. He also recommended that the Ministry review and upgrade its form letters to ensure that Family Benefits applicants/recipients are provided with reasonable explanations for all decisions made in respect of their entitlement to benefits.

Replies were received from both the Ministry and the Social Assistance Review Board. The Ministry indicated that it had prepared a new summary of all the evidence available to it at that time. The new submission was forwarded to the Social Assistance Review Board with a copy to this Office. Further, the Ministry indicated that it had requested that the Board rehear the complainant's appeal. The Social Assistance Review Board notified this Office that it had agreed to hold a hearing for reconsideration of its decision.

In respect of the Ombudsman's tentative conclusions and recommendations concerning the apparent lack of accurate information concerning the classification schemes, the Ministry advised this Office that it was in the process of reviewing all communications that it sends out to applicants/recipients. The review is part of the Ministry's development of a new computer system which is intended to integrate and improve all existing systems. Finally, the Ministry advised that it will no longer be making a distinction between the classifications "permanently unemployable" and "disabled". The Ministry intends to devise a new category of eligibility. At the time of the response, the Ministry was in the process of developing a legislative definition for the new category.

The Ombudsman considered the representations of the government agencies and determined that the complaint was

resolved to the complainant's satisfaction. Accordingly, the complainant was issued a copy of the Ombudsman's final report and the file on the matter was closed on January 25, 1983.

DETAILED SUMMARY NO. 4

The complainant, formerly an administrator with a municipality, wrote to the Ombudsman on May 6, 1981 concerning certain actions taken by the Ministry of Community and Social Services. The complainant had several contentions against the Ministry; however, some of these had been dealt with by the courts in a wrongful dismissal action the complainant had brought against the municipality, and some of the contentions dealt with the proceedings at and arising out of the civil action.

As the Ombudsman is precluded from investigating judges or the functions of any court, the complainant was told that the only issue within the Ombudsman's jurisdiction was whether the Ministry had acted unreasonably in preparing a report on the welfare administration in the municipality and submitting that report to the municipality without first giving the complainant an opportunity to be apprised of the contents of the report and make submissions.

The Ombudsman notified the Ministry of Community and Social Services of his intention to investigate this complaint and requested a statement of the Ministry's position. The Ministry replied that, while the decision to dismiss the complainant may well have been as a result of the findings documented in the Ministry's report, the decision was that of the municipality, not the Ministry.

During the course of the investigation, it was found that a branch of the Ministry, as a practice, conducted reviews of Municipal Welfare Administrations throughout the province on a regular basis. The Director of the Branch of the Ministry has a supervisory function to ensure that the legislation is properly administered and a duty to advise administrators and others as to the manner in which their duties under the legislation are to be performed.

The Ministry undertook a complete review of a department in which the complainant was employed. The scope of the review was very broad, encompassing virtually the entire operation. In the course of the review, a number of allegations and complaints were made against the

complainant which, in the opinion of the Ministry's review team, were sufficiently serious to warrant further investigation as these complaints and allegations could, if substantiated, reflect on the manner in which the department was being administered and thus be indicative of the manner in which the complainant carried out his function.

The complainant was aware of the review. The scope of the review had been discussed with him; he was given an opportunity to voice any particular areas of concern he wished investigated, and his input was invited. The complainant in turn made his staff and his files available to the review team. However, at no time throughout the review was the complainant told or otherwise made aware of the findings of the review team or of the allegations made against him.

Upon completion of the review, a meeting comprised of Ministry and municipal officials was held and the report was read. Subsequently, a closed municipal council meeting was held at which Ministry officials were also in attendance. At that meeting, copies of the report were distributed among the participants and the council discussed the report. The decision to dismiss the complainant was taken at that meeting by the council. That action was taken that day and the complainant was told that he could obtain a copy of the report from the municipality's solicitor.

The issue before the Ombudsman was whether the complainant was denied natural justice and treated fairly, inasmuch as he was not apprised of the contents of the report so that he could present "his side of the story".

The Ministry took the position that since it was commissioned by the municipality to conduct the review and to report to it, the Ministry's only responsibility was to report its findings to the municipality. Moreover, the Ministry argued that if the rules of natural justice applied, they applied to the municipality, the body which ultimately dismissed the complainant.

Our review of the legislation revealed that almost every facet of the administration and delivery of this governmental service, including the appointment of the administrator, is controlled either directly or indirectly by the Ministry. Hence, it appeared that the review was conducted for the benefit and use of the Ministry as well as the municipality.

Our review of the case law reinforced the Ombudsman's opinion that even though the Ministry made no actual

decision with respect to the disposition of the complainant, there was a duty on the Ministry to treat the complainant fairly, which would have entailed advising the complainant of the substance of the allegations and statements critical of him and to provide him with an opportunity to respond to those allegations and statements.

On February 22, 1982, the Ombudsman notified the Ministry, pursuant to section 19(3) of the Ombudsman Act, that he had come to the tentative conclusion that the complainant ought to have been made aware of the allegations and statements critical of him contained in the Ministry's report respecting its administrative review of the department in question before the report or the contents thereof were disclosed to the municipality, and that the Ministry's omission to do so was "unreasonable" and "unjust", as set out in section 22(1)(b) of the Ombudsman Act. The Ombudsman made the tentative recommendation that the Ministry adopt the practice of advising municipal officials of its findings pursuant to an administrative review in cases such as the complainant's where such findings may have adverse consequences for municipal officials.

The Ministry of Community and Social Services was afforded the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of the Ombudsman Act.

In its representations, the Ministry agreed in principle with the possible recommendation but took the position that such a practice could not be followed unquestioningly and without due regard for all the circumstances involved in a particular situation, as blind adherence to such a policy, while it may afford natural justice to one party, could well result in adverse consequences for other parties involved. The Ministry advised that the practice was not followed in this case because (1) the municipality had requested a meeting with the Ministry before the Ministry had had an opportunity to complete its report; and (2) the Ministry was interested in protecting its sources from possible retributive measures which might have been taken by the complainant were he to discover the identity of those who had made damaging statements against him, as he was still the administrator and in a position to take such measures. The Ministry also took the position that if there was a duty to treat the complainant fairly, that duty was the responsibility of the municipality since it was the municipality that took action on the report.

The Ombudsman, upon consideration of this submission, was of the opinion that the argument of the report not having been finalized at the time of the meeting between the Ministry and the municipality did not exculpate the Ministry from its duty to treat the complainant fairly. With respect to the Ministry's concern for protecting the anonymity of its witnesses, the Ombudsman was of the opinion that the substance of the report could have been made known to the complainant without the Ministry having had to breach confidentiality.

Finally, with respect to the Ministry's argument that if there were a duty to act fairly, that duty was the responsibility of the municipality, the Ombudsman was of the opinion that, notwithstanding any duty on the part of the municipality, the case law supported the argument that even though the Ministry had made no actual decision in its report, the potential effects of the findings contained in the report were far-reaching and of vital concern to the complainant.

The Ombudsman concluded that since the complainant ought to have been made aware of the substance of the allegations and statements critical of him contained in the Ministry's report before the report or the contents thereof were disclosed to the municipality, and to have had an opportunity to respond, the Ministry's omission to do so was "unreasonable" and "unjust" pursuant to section 22(1)(b) of the Ombudsman Act.

The Ombudsman recommended, pursuant to section 22(3)(d) that the Ministry adopt the practice of advising municipal officials of its findings pursuant to an administrative review in cases such as the complainant's where such findings might have adverse consequences for the affected municipal officials. This includes cases such as the complainant's where there are potential confidentiality conflicts. The Ombudsman noted that there are means of dealing with such conflicts so that fairness is done.

The Ombudsman reported his conclusion and recommendation to the Ministry pursuant to section 22(3) of the Act on June 24, 1982. By letter dated December 8, 1982, the Ministry informed the Ombudsman that it was prepared to accept the Ombudsman's recommendation. The results of the investigation were reported to the complainant and the file on the matter was closed on December 29, 1982.

DETAILED SUMMARY NO. 5

This complainant contacted the Ombudsman by letter in October 1982. She complained that she had applied for Family Benefits during the spring of 1982, but that she had, to date, received no decision from the Ministry of Community and Social Services. She contended that the time taken by the Ministry to reach a decision with respect to her eligibility was unreasonable.

On November 3, 1982, the Ombudsman notified the Deputy Minister of Community and Social Services of his intention to investigate this complaint, and advised him that because of the urgent nature of the matter, his investigation would begin immediately.

During the following two weeks, the investigator inquired into the status of the application and the reasons for the delay. It was revealed that the medical documents pertaining to the complainant's application had been lost at the Ministry's head office in Toronto.

With the cooperation of the Ministry's field worker at the district office, and the manager of the Family Benefits Branch in Toronto, a second set of medical documents was sent from the district office to Toronto and the complainant's eligibility was reviewed immediately upon the Ministry's receipt thereof.

The complainant was granted Family Benefits on November 25, 1982. Payment was made retroactive for four months, the maximum allowable under the legislation. The file was closed on December 10, 1982.

MINISTRY OF
CONSUMER AND COMMERCIAL RELATIONS

DETAILED SUMMARY NO. 6

The complainant wrote to the Ombudsman on December 1, 1980 complaining of the Ontario Securities Commission's failure to investigate his complaint regarding an unauthorized dealing in securities by his broker.

The complainant had made his concerns known to the Ontario Securities Commission on April 11th and 14th, 1980. One week later he was informed that his complaint had been referred to the Toronto Stock Exchange, and that the Exchange would report to the complainant on the results of its investigation, with advice to the Ontario Securities Commission.

The Toronto Stock Exchange conducted an investigation and in a letter dated August 27, 1980 the Exchange informed the complainant that "no sustainable violation of the Exchange's regulations has been uncovered". However, the Ontario Securities Commission was informed by the Exchange that it (the Exchange) was:

... unable to find evidence of a definite nature in this case, other than the statement of the complainant, to warrant a prosecution. As a result the Exchange has decided not to register a complaint against the broker in this matter but he has been informed and cautioned in respect of future actions.
(Emphasis added)

This notification to the Ontario Securities Commission was accompanied by a copy of the Exchange's investigation report, without appendices. Of the 23 paragraphs contained in the report, 14 made reference to the appendices. The report contained no conclusions.

On September 3, 1980, one day after the Ontario Securities Commission received the report (without the appendices) from the Exchange, a letter was sent to the complainant from the Ontario Securities Commission indicating that the Commission had reviewed the report and concurred with the decision of the Toronto Stock Exchange. No reference was made to the cautioning of the broker, and no reasons were given for the finding that the broker had not engaged in any improper activity.

On this basis the Ombudsman sent a letter to the Chairman of Ontario Securities Commission, pursuant to

section 19(3) of the Ombudsman Act, in which he set out his tentative conclusions and recommendations. The Ombudsman stated that it appeared that the practice of referring such complaints to the Toronto Stock Exchange for investigation was not unreasonable, but in this case, in referring the matter, the Commission had unreasonably omitted to tell the complainant that it was exercising its discretion not to investigate his complaint, and that if he were dissatisfied with the Exchange he could return to the Commission.

To the Ombudsman it also appeared that the Ontario Securities Commission had: unreasonably and wrongly reviewed the Exchange's report without having the full report; concurred with the report without advising the complainant of the gist of the report or obtaining and considering his comments before arriving at a conclusion; omitted to give reasons for its decision; and omitted to inform the complainant that the broker had been cautioned.

Thus, to the Ombudsman, it appeared that he could recommend that the Commission should now hold a proper review, by other persons employed by the Commission, of the full report, advise the complainant of the gist of the report and obtain his comments, then consider his comments and the report in deciding whether an investigation ought to be ordered, and inform the complainant of the decision and the reasons for it.

The Ontario Securities Commission responded to the Ombudsman's tentative conclusions and recommendations and suggested in part that the whole thrust of the opinion misconceived the duties and obligations of the Commission.

As a result of the Ontario Securities Commission's response, a meeting was held with a representative of the Commission, at which time he indicated that he felt the Ombudsman and the Ontario Securities Commission were at cross purposes.

The Commission's representative felt the Ombudsman did not understand the philosophy of the Ontario Securities Commission. It was his prime concern that in cases such as this, where there is a complaint against a broker without a past record, the investigation should be referred to the Toronto Stock Exchange. He suggested that the intention of the government is to delegate as much as possible to self-regulatory bodies. That philosophy, he stated, must be tempered by a general overview of the Toronto Stock Exchange by the Ontario Securities Commission.

The Ombudsman felt that there had been some misinterpretation of his tentative conclusions and recommendations. The Ombudsman had not made the tentative conclusion that the Ontario Securities Commission was wrong in referring the complaint to the Toronto Stock Exchange. It was pointed out that there was no allegation that the Securities Commission had acted contrary to law, but rather that it might have acted unreasonably. It was further indicated that the thrust of the tentative conclusion was that the complainant should be made aware of the gist of the report, not that he be provided with a copy of the report itself. The representative agreed to take this matter up with the Commission.

Subsequently, the Ombudsman received a letter advising him that the Commission had decided to implement new procedures for processing complaints. These new procedures were to include advising a complainant that the Ontario Securities Commission has exercised its discretion not to investigate a complaint, and that the Toronto Stock Exchange would advise the complainant of the results of its investigation when such complaints were referred to the Toronto Stock Exchange. In addition, the complainant was to be advised that neither the Toronto Stock Exchange nor the Ontario Securities Commission had the power to effect restitution on the complainant's behalf.

In consideration of the Ontario Securities Commission's change in procedures, the complainant's satisfaction with that change, and the Toronto Stock Exchange's caution of the securities broker, the Ombudsman's report was issued without any recommendations.

The file was closed on August 10, 1982.

MINISTRY OF
CONSUMER & COMMERCIAL RELATIONS

RECOMMENDATION DENIED

DETAILED SUMMARY NO. 7

This complaint involved the nature and extent of the authority given to a Tribunal, and a corporation designated by the Legislature, to administer a program providing certain statutory protections and remedies to purchasers of new homes. The legislation, the Ontario New Home Warranties Plan Act, came within the responsibility of the Ministry of Consumer and Commercial Relations. After completing the investigation of the complaint, recommendations were made which have not been implemented.

The complainant, through his solicitor, contended that a decision of the Commercial Registration Appeal Tribunal was unreasonable and unfair. He had appealed a decision of HUDAC, the Corporation designated to administer the New Home Warranties Plan which included a guarantee fund, to restrict his compensation to \$5,000 on the basis that the remaining funds claimed were not eligible as they were not part of the deposit paid to the builder.

The Tribunal found the following facts. The complainant had entered into an agreement with a builder registered with HUDAC to purchase a home to be constructed on a specific property for a certain sum. A deposit of \$5,000 was paid at that time. Shortly after, the builder approached the complainant for advances on the remainder to ensure completion. The builder gave as security for these advances two mortgages on separate properties, each in the sum of \$21,000. These were fourth and fifth mortgages, and when the builder lost these properties, the complainant's security was transferred to the subject property and the builder's home, again as low priority mortgages. Subsequently, construction ceased and power of sale proceedings on the subject property were instituted by a prior mortgagee. The complainant entered into an agreement to purchase the property under power of sale from the prior mortgagee. The complainant paid a purchase price to the mortgagee plus a further \$30,000 to have construction completed. His estimated loss was \$28,300. The Tribunal concluded the monies advanced were in fact deposits, paid to secure performance.

As stated, HUDAC originally accepted the complainant's claim, but only for the \$5,000 paid on the signing of the agreement. However, at the hearing, HUDAC raised for the first time the argument that the complainant was entitled to no payment whatsoever, given its regulation restricting deposit claims to those who "do not become an owner". As the complainant had purchased the property from a mortgagee, he was considered an owner.

The Ombudsman's investigation focused on two issues: the fairness of the hearing, and the legal issues raised. The Ombudsman was not prepared to conclude that the Tribunal had been unfair in its conduct of the hearing, but he did have concerns with respect to the legality of the position taken by HUDAC and the Tribunal. Legal research indicated that the regulation relied on by the Tribunal to defeat the complainant's claim was of questionable validity, as it derogated from rights given by statute.

The Ontario New Home Warranties Plan Act, section 11, provides for the establishment of the Ontario New Home Warranties Plan, which consists of two schemes for consumer protection. The first establishes statutory warranties, and the second provides for compensation to be paid out of a guarantee fund if one comes within one of the situations described in section 14(1). Under section 23 of the Act, the designated corporation (in this instance, HUDAC) has the power to make bylaws, which are deemed to be regulations, "providing for the establishment and maintenance of the guarantee fund and governing procedures for claiming and determining claims for compensation from the guarantee fund" as well as "prescribing any matter required or authorized by this Act to be, or referred to in this Act as, prescribed by the regulations".

Under section 6 of Regulation 943/76 (now Regulation 726, R.R.O. 1980), HUDAC purports to set out "limits of liability" for payment out of the guarantee fund. It is this section which was considered by the Tribunal and which was held to bar the complainant from entitlement to payment from the Fund.

After reviewing the legislation and regulations and the legal research conducted on the issue, on June 5, 1981, the Ombudsman notified the Chairman of the Commercial Registration Appeal Tribunal, the Deputy Minister of the Ministry of Consumer and Commercial Relations, and HUDAC, of his possible conclusion and possible recommendations. It was the Ombudsman's tentative opinion that section 6 of the regulations was not consistent with the Ontario New Home Warranties Plan Act in that it exceeded the regulatory powers given under that statute. The Act, in section 14, sets out entitlement and speaks to limits on the amount being fixed by the regulation. Section 14(1) (a) states as follows:

(1) Where,

(a) a person who has entered into a contract with a vendor for the

provision of a home has a cause of action in damages against the vendor for financial loss resulting from the bankruptcy of the vendor or the vendor's failure to perform the contract;

.... the person or owner is entitled to be paid out of the guarantee fund the amount of such damage subject to such limits as are fixed by the regulations. (emphasis added)

The grammatical and ordinary sense of the wording used in section 14 indicates that the regulations are to limit amounts, not entitlement. If the Legislature had wished to limit entitlement by regulation, this could have been clearly stated. In the Ombudsman's view, it was unlikely that the Legislature intended to delegate to a designated corporation the authority to vary, cancel or otherwise limit the basic entitlement set out by statute. Rather, it intended the extent of monetary liability to be flexible and thus left this to the discretion of the corporation administering the Fund. Decisions as to entitlement under section 14, made by the designated corporation, were not to be final in the legislative plan and under section 16(1) could be appealed to the Tribunal. The Tribunal is given the power to direct the Corporation to act as the Tribunal thinks it "ought to ... in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Corporation." Thus, considerable authority was reserved to the Tribunal in the interpretation of the Act and regulations and entitlement thereunder. Further, there is no provision for approval of bylaws by the Lieutenant Governor in Council and this could be a further indication that the bylaws were not contemplated as affecting in any way the substantive rights set out in the statute.

The facts of the complainant's case clearly demonstrated that the regulation, section 6, in addition to limiting claims to a maximum of \$20,000, set out limitations on entitlement. Even though the complainant came within the terms set out in section 14 of the Act and therefore was, at first appearance, entitled to some compensation, he became an "owner", in contravention of the wording of section 6(1) of the regulation, and consequently was held not to be entitled.

In the course of the investigation, the Ombudsman came to the possible conclusion, pursuant to section 22(1)(a)

of the Ombudsman Act, that that part of the decision of the Tribunal which was based on an interpretation of section 6 of Regulation 575/77 was contrary to law, in that section 6 was ultra vires of the Ontario New Home Warranties Plan Act, 1976.

The Ombudsman made the possible recommendation, pursuant to section 22(3)(e) of the Ombudsman Act, that the Tribunal reconsider the law on which the decision was based and apply the principles of statutory interpretation set out in its decision in an earlier case, noting the Ombudsman's comments. Also, pursuant to section 22(3)(c) of the Ombudsman Act, the Ombudsman tentatively recommended that the decision of the Tribunal be varied by the Tribunal issuing an order striking out that part which was based on section 6 of Regulation 575/77. Further, the Ombudsman tentatively recommended that the Ministry take appropriate steps to ensure that the ultra vires portions of the regulations be amended to comply with the Act.

In accordance with section 19(3) of the Ombudsman Act, the Ombudsman accorded the Deputy Minister an opportunity to respond to his possible conclusion and recommendations.

The Deputy Minister responded to the Ombudsman's tentative conclusion saying that he had difficulty only with the tentative recommendation which would change the decision in the complainant's case. He noted his concern that there might be a possible inconsistency with the disposition of this case by our Office and another case which was currently before the courts on a similar issue, and asked that a final decision be postponed.

The Chairman of the Tribunal also raised his concern about different dispositions of claims by the Ombudsman and the courts. He noted that in the past the Tribunal had taken the position that it was functus officio and therefore questioned whether it had any authority to make an order changing its earlier disposition of the complainant's case.

The court case referred to by the Tribunal and the Ministry was heard on May 20, 1982 before the Divisional Court and a decision was given on grounds not relating to the validity of the regulation. On June 21, 1982, leave to appeal was argued and granted, specifically on the question of the validity of the regulation.

Subsequently, on July 19, 1982, the Ombudsman issued his report with the final conclusion that the decision of the Tribunal to deny the complainant entitlement to payment out of the guarantee fund was wrong and was based on

a regulation which appears to have been contrary to law, as it derogated, without authority, from a substantive right given by statute. It was his recommendation that the Tribunal and Ministry reconsider the law on which the Ministry's decision was based, and take appropriate steps to amend the regulations to comply with the Ontario New Home Warranties Plan Act. Further, the Ombudsman recommended that appropriate steps be taken to provide the complainant with payment of his statutory entitlement to compensation.

The Tribunal responded, stating that while it agreed with the Ombudsman's recommendation, it did not see how it could implement his recommendation with respect to the complainant, given that it considered itself functus officio.

In responding to the Ombudsman's final report, the Ministry asked that its time for reply be extended until after the hearing of the Court of Appeal decision in the above-mentioned similar, but unrelated, case. The Ombudsman granted this extension and the Court of Appeal decision was rendered on November 3, 1982. The Court expressed its concern regarding the validity of the regulation but, on the facts of that particular case, dismissed the appeal, expressly stating that its disposition of the case was not to be taken as indicating its agreement with the interpretation of the regulation given by either the lower court or the Tribunal.

The Deputy Minister responded on February 23, 1983, stating his belief that the complainant's claim had been appropriately dealt with and that there was no statutory authority for the Tribunal to revise its decision. Regarding the amendment to the regulations, he stated that the Ministry had no control over the decisions of the HUDAC New Home Warranties Program or the content of the regulations; however, he stated his intention to recommend the revision of the regulation and to reconsider the entire Act at the earliest opportunity. With respect to compensation to the complainant, he stated that in his opinion it was not appropriate to involve the Tribunal or provide compensation out of public funds. He felt it was up to the HUDAC New Home Warranties Program to decide whether it wished to make an ex gratia payment and he offered to advise it of the Ombudsman's findings.

The matter was forwarded to the Premier for consideration on March 11, 1983.

MINISTRY OF
CORRECTIONAL SERVICES

DETAILED SUMMARY NO. 8

This complaint was received by the Office of the Ombudsman on July 8, 1981. The complainant, who was an inmate, stated that he had been denied proper dental treatment.

The investigation revealed that the complainant had consulted the institutional physician because he was experiencing pain from a tooth that he had damaged prior to his admission to the jail. The physician prescribed pain-relieving medication and referred the complainant to the local dentist. However, when the complainant was advised that a dental appointment had been arranged for a tooth extraction, he stated that he wished to have his tooth repaired. The complainant's request was brought to the attention of the Superintendent, who advised the complainant that dental treatment for jail inmates was restricted to extractions or fillings and that other dental procedures would be deferred until after the complainant's transfer to a correctional centre. The appointment that had been made for the tooth extraction was cancelled because the complainant did not wish to have this procedure carried out.

When the investigation commenced, the complainant had been sentenced to a reformatory term and he was awaiting transfer to a correctional centre. During the course of the investigation, an appointment was arranged for the complainant to have a dental assessment, but the complainant's transfer to a correctional centre intervened. Approximately five weeks elapsed between the complainant's first report of toothache and the date of his transfer, during which time he continued to complain of a toothache. (The complainant was subsequently offered restorative dental treatment at the correctional centre).

According to the Ministry of Correctional Services' Manual of Standards and Procedures, two objectives of the dental care plan are relief of pain and preservation of natural teeth during imprisonment. The Ministry's standard procedure provides for inmates to see a dentist on referral from the institutional nurse or physician, or at the inmate's request. Inmates sentenced to less than 90 days, or those on remand, are eligible to receive emergency treatment only for relief of pain, actual or imminent, and infection. Those sentenced to more than 90 days are entitled to receive basic preventative and restorative dental care.

The question arising in the instant case was "who determines whether dental treatment is urgent or necessary and the extent of the treatment to be provided"? The investigator discussed this question with the Ministry's Senior Medical Consultant, who undertook to meet with the jail Superintendent and the Regional Director to discuss this matter. Following this meeting, the Senior Medical Consultant advised the investigator that the Superintendent appeared to have misinterpreted the Ministry's standard procedure. He said it had never been intended that the decision to provide dental treatment or the extent of the treatment to be provided should rest with either the Superintendent or the institutional physician. The Ministry's Consultant in Dentistry had circulated to Superintendents and health care personnel a summary of "common causes of pain in and around the mouth", listing typical dental histories, clinical signs and possible treatments. It was anticipated that when an institutional physician noted such conditions upon receiving a toothache complaint, the physician would refer the inmate for dental assessment. The Senior Medical Consultant said that the dentist had the discretion to determine what treatment was needed, whether there was an urgent need for treatment, and the extent of treatment to be provided (within the Ministry's guidelines), and such treatment would not necessarily be restricted to fillings and extractions. The Senior Medical Consultant felt that his discussions with the Superintendent and the Regional Director had served to clarify this issue.

During a subsequent visit to the jail, the investigator noted that the Ministry's dental referral procedures, as interpreted by the Senior Medical Consultant, were being followed.

When advised of the result of the investigation, the complainant stated that his complaint had been satisfactorily resolved through the action taken by the Ministry's Senior Medical Consultant during the course of the investigation.

DETAILED SUMMARY NO. 9

This complaint was first brought to the Office of the Ombudsman on October 6, 1982.

The complainant indicated that he had been employed in an industry at a central Ontario Correctional Centre until August 11, 1982. On August 12, 1982, he was taken to

court in Toronto on a Judge's Order, whereupon it was determined that an error had been made by the courts and the charge against him was withdrawn. Given that the complainant had not left the industrial establishment on his own accord, he wished to be reinstated to his former position on his return to the Correctional Centre, pursuant to the terms of the Collective Agreement. As well, the complainant insisted that the calendar days which he had been absent be accredited to those days already worked, thus raising him to union status on September 17, 1982. At this point, the complainant would be entitled to receive \$514 in back pay and, as well, his salary would increase to \$10.40 per hour. Although staff at the industrial establishment promised that he would be the next employee to be rehired, four other inmates were hired ahead of him. The complainant concluded by stating that a week had passed since he had reached union status and he had not yet received his back pay. Consequently, he requested the Ombudsman's Office to investigate.

Our subsequent investigation resulted in the complainant being reinstated at the industrial establishment. In addition, the management at the industrial establishment agreed to elevate the complainant to union status effective September 17, 1982, and, as well, agreed to pay him from that date at \$10.40 per hour.

DETAILED SUMMARY NO. 10

This complaint, from an inmate in a jail in central Ontario, was first brought to the Office of the Ombudsman on January 18, 1983. It involved the spraying of an area adjacent to the complainant's cell with an insecticide, which caused the complainant to suffer headaches from the strong and unpleasant odour of the chemical used.

The complainant contended that on January 10, 1983, a service man sprayed an insecticide in the day room which is the area directly in front of his cell. Although the odour from the chemical was quite strong, the inmates were not removed from the area while the odour dissipated.

It was determined that the chemical being used in this institution was an organic phosphate known as Diazinon. An entomologist with the Pesticides Control Section of the Ministry of the Environment indicated that although it was of low toxicity, its properties could cause medical problems for those suffering from allergies. It was suggested by the entomologist that people in the sprayed

area should be removed for several hours to allow the odour to dissipate and the chemical to crystallize. It was also suggested that unless there was an infestation of cockroaches, a weaker yet effective chemical known as Ficam could be used.

Further investigation revealed that the Diazinon was being used in this institution to control ants in the kitchen area, and that in fact, there were no cockroaches in the building. An official of the insecticide spray company advised that he was not aware that inmates were not being removed from the sprayed area for a period of several hours. After considering that it would be difficult to relocate the entire inmate population, he suggested the use of Ficam to replace Diazinon. This was acceptable to the superintendent of the institution and the change was made. The complainant subsequently informed the investigator that he considered the matter resolved and our file was closed.

MINISTRY OF
EDUCATION

DETAILED SUMMARY NO. 11

This complainant contacted the Ombudsman's Office on January 26, 1982, complaining of certain actions on the part of the Teachers Superannuation Commission. He contended that the Commission was unreasonable in refusing to refund until August 1987 contributions he made to the Superannuation Fund while he was on leave overseas.

The complainant, a teacher, had been contributing to the Teachers Superannuation Fund since 1965. From August 15, 1974 to August 14, 1977, he was on a leave of absence while he taught overseas under contract with the Canadian International Development Agency. While he was out of the country, he remitted to the Superannuation Fund the sum of almost \$6,000, representing approximately 14% of the salary he earned during the period, as his contribution to the pension fund. On his return to Canada, he was informed that in order to get pensionable credit for the period of his leave, he would have to pay an additional sum amounting to almost \$5,000 plus interest from May 31, 1979. The payment would have to be made by August 31, 1987. The complainant did not wish to make the payment, and requested that his earlier contribution be returned. The Commission informed him that it could not refund his money until August 31, 1987, and at that time it could refund his money with interest at the rate of 3%.

The Ombudsman notified the Teachers Superannuation Commission of his intention to investigate the complaint and requested a statement of the Commission's position. The Commission responded that it had accepted the complainant's payment in accordance with section 9(2) of Regulation 930 made pursuant to the Teachers' Superannuation Act, which requires payment based on the salary upon return to employment in Ontario. Subsection (8) of the same section provides that a refund cannot be made until the time limit for the payment has expired. The Commission's refusal to refund the complainant's payment was made in accordance with these regulations.

Our investigation of this complaint included a review of the relevant regulations, and a discussion of the rationale behind the regulations, with the Commission's Director. In addition, comparative legislation for other large pension plans was reviewed. The circumstances surrounding the complainant's payment into the fund and subsequent request for a refund were ascertained from the Commission's files.

Having reviewed the results of the investigation, the Ombudsman came to the tentative conclusion that the decision of the Commission, made in accordance with section 9(8) of Regulation 930, passed pursuant to the Teachers' Superannuation Act, was made "in accordance with a rule of law or a provision of [an] act that is or may be unreasonable, unjust, oppressive ..." within the meaning of section 22(1)(b) of the Ombudsman Act. The section in question permits the Commission to hold the partial contribution made by the complainant for ten years at 3% interest, and provides that the complainant will get no pensionable credit for any of his approved leave of absence should he not wish to pay the extra amount owing. In addition, the Ombudsman tentatively concluded that the 3% rate of interest provided by the section of the regulation, and the terms upon which a refund may be made, may result in an oppressive outcome in circumstances such as those of the complainant. He therefore advised the Commission that it might be open to him to recommend that the Commission give immediate consideration to the retroactive amendment of the relevant part of the Regulation so that a complainant might obtain a refund of his contribution and obtain the benefit of a higher rate of interest than the 3% provided by the Regulation.

The Commission, having reviewed the tentative conclusions and recommendations of the Ombudsman, responded that a change in the Act or the Regulations could only be made by the Minister of Education, but that the Commission, having considered the tentative recommendation, felt that the Regulation should be changed to permit a refund under the circumstances of this complainant. The Commission therefore agreed to forward a request for a change in the Regulation to the Minister of Education.

Our Office was later advised that steps to make the proposed change in legislation had been initiated, and that the proposed amendment would go before the Legislature as soon as possible. The complainant, having been informed of the proposed changes, agreed that they would resolve his complaint, and the file on the matter was closed on January 27, 1983.

MINISTRY OF
THE ENVIRONMENT

DETAILED SUMMARY NO. 12

The Clerk-Treasurer of a township in Ontario brought this complaint to the Office of the Ombudsman by way of a letter dated May 3, 1982. Similar complaints were received from a councillor, two residents of the township, and the Member of Provincial Parliament for the area.

The township had undertaken a project to install a water supply system under a direct grant plan administered by the Ministry of the Environment. The township was advised by the Minister of the Environment on March 20, 1981 that the project was approved and the township was eligible for a provincial grant of \$969,000 or 72% of the estimated cost of the project. In November, 1981, the township received Ontario Municipal Board approval on the basis that 72% of the estimated project cost would be borne by the Ministry. The township subsequently advertised for tenders. Tenders were dated April 1, 1982 and contained a 60-day expiry term, necessitating acceptance of the lowest bid by May 31, 1982.

On April 15, 1982, the township was advised by the Ministry that an error had occurred in calculations and that the correct entitlement to the grant had been reduced from \$969,000 to \$90,000. The Clerk-Treasurer complained that the Ministry's position was unreasonable as the situation concerning the water supply in the township had become extremely serious; the project would not proceed without the original grant, and the township had relied in good faith on the Minister's original funding commitment.

On June 3, 1982, the Minister of the Environment was advised of the Ombudsman's intention to investigate this complaint. The complaint was immediately assigned for investigation.

On June 11, 1982, the Ombudsman met with the Minister and discussed this complaint with him. On June 21, 1982, investigators interviewed Ministry representatives and reviewed relevant material on the Ministry's file. The Ombudsman also had several telephone conversations with the Member of Provincial Parliament for the area.

During the course of the investigation it was determined that, in processing the grant application submitted by the township, a Ministry policy for financing the construction of water works had not been applied.

The Ministry's policy statement outlining the procedures to be followed for calculating grants was reviewed.

Two types of grant calculations were discussed in the statement: (1) grants up to 75% for high-cost works; and (2) 15% grants for major works. The main purpose of the first type of grant was to facilitate construction of new communal water or sanitary works to serve established built-up areas or to support plans for population growth. In determining the amount of grant available, the total number of existing and potential lots serviced, among other factors, is considered. It was learned that the term "lot" can be defined as "... a typical home or dwelling unit or lot equivalent which is assessed at three persons". There was, however, an additional criterion outlined in the policy statement. This criterion is known as the "30 metre rule" and it takes into account the length of sewer extending along long property frontages. In applying this rule the total length of sewer is divided by 30 metres (the length of one lot). The rule is applied so that long frontages can be allocated more than one connection and municipalities would then bear a fair share of the cost of a project. If the rule is not applied, pipeline systems through non-urban areas could be made relatively inexpensive to municipalities, contrary to the intent of the policy.

In this case, the township submitted a grant application with a grant calculation based on the number of potential lots determined by population. It was the responsibility of the Ministry to check the application to determine whether the proposed works were to service long frontages and whether the "30 metre rule" ought to be applied. The Ministry failed to review the application using this rule.

It was not until late 1981 when a neighbouring township questioned the amount of its provincial grant that the Ministry rechecked the grant calculation for the township in this case. This led to the discovery of the Ministry's error. The Ministry subsequently advised the township that it could not proceed on the basis of the figure originally quoted.

During the course of the investigation, the Ministry reconsidered its position and indicated to this Office that as a result the grant was going to be restored. The Ministry confirmed its position by a letter dated July 6, 1982. The Clerk-Treasurer agreed that this would enable the township to proceed with its original construction program and that the township's complaint had been resolved.

Our file on this matter was closed on August 9, 1982. In his closing letter to the township, the Ombudsman noted

that the "30 metre rule" appeared to be a necessary and integral part of the Ministry's policy of providing services for urban areas; however, under the circumstances of this case, he was pleased to see that the matter had been resolved. The Ombudsman also noted the assistance that had been provided to his Office by the Member for the area.

On February 2, 1983, the Minister of the Environment wrote to the Ombudsman to advise him of the organizational changes that had been made in the Ministry to ensure that a similar situation did not recur. He noted that on August 3, 1982, the Ministry announced a reorganization which included the creation of a branch known as the Capital Financing and Review Branch. This Branch is responsible for the calculations regarding the rate structure and is separate from the Branch that provides construction management. By separation of the functions, the Minister anticipated that there would be no errors of this nature in the future.

DETAILED SUMMARY NO. 13

This complainant telephoned the Ombudsman's Office on August 5, 1982 concerning a decision rendered by the Ministry of the Environment. She contended that the Ministry had acted unreasonably in allowing a pesticide company to use a toxic aerial spray in an area which bordered her property.

The complainant owns property which is used for the grazing of sheep. The property is adjacent to the holdings of a large food producing company, which had arranged for an aerial spray of a pesticide. The aerial sprayer obtained the required permit from the Ministry and proceeded to prepare one of its aircraft for the aerial spray. The complainant was not alerted to the impending spray until the day that it was to occur, and in fact, was given two hours' warning by an employee of the food producing company. The employee cautioned the complainant that there might be an "over-spray" or "wind drift" of the chemical, and since it is quite toxic in nature, he warned her that people should not eat any of the vegetables from their gardens for at least five days. The complainant attempted to ascertain from the employee what effect the chemical would have on sheep if they ate sprayed grass; however, the employee did not know.

The complainant contacted the Ministry immediately but was advised that the aerial spray was properly authorized,

and that the chemical was on the accepted list of pesticides.

On the complainant's contact with this Office, the investigator contacted the Ministry immediately and learned that the chemical was indeed toxic and dangerous to animals and humans if ingested within five days of being' sprayed. As a result of the contact with Ministry officials in which they were alerted to the concern regarding the complainant's sheep, the authorization for the aerial spray was altered. The chemical was changed to a less toxic substance, and the pilot of the spray aircraft observed a wide buffer zone between the food producing crops and the complainant's property.

As the complaint was resolved to the satisfaction of the complainant, the Ombudsman did not pursue the matter any further and accordingly, the file was closed on August 5, 1982.

DETAILED SUMMARY NO. 14

This complaint involved the determination of whether the complainant was a "creditor" within the meaning of the Public Works Creditors Payment Act. The complainant is the owner of a company which rented construction equipment to a contractor for use in the building of a sewer system, under contract with the Ministry of the Environment.

The Ministry stopped the construction project, and the complainant made a claim under the Public Works Creditors Payment Act for payment of the monies owing to his company by the contractor. The Minister rejected this claim on the ground that the complainant was merely a renter of equipment, and therefore not eligible to be a creditor.

After extensive investigation, the Ombudsman concluded that the Minister's decision not to accept the complainant's claim under the Public Works Creditors Payment Act was a mistake of law, and recommended that the Minister's decision be cancelled and that he accept and consider the claim as one properly made under the provisions of that Act.

The Ombudsman received written confirmation from the Ministry that it had decided to implement his recommendation and would accept and consider the claim made by the complainant as a claim properly made under the provisions

of the Public Works Creditors Payment Act. The complainant was advised that the complaint had been successfully resolved, and his file was closed.

The Ministry appointed an adjudicator to assess the amount of the claim. The adjudicator awarded the complainant \$27,730.30 on his claim for rental charges, but did not award the claim for interest charges on the amount he had originally claimed or the claim for legal costs in pursuing his claim.

On February 29, 1980, the complainant wrote to the Ombudsman's Office and complained against the Ministry of the Environment for failing to pay interest charges and legal costs as claimed.

The investigation focused on two issues: first, whether the Minister has authority under the Public Works Creditors Payment Act to pay the interest as part of, or in addition to, a payment of a claim within the meaning of section 2 of the Act, and secondly, whether the Minister has the authority under that Act to pay the claim for legal costs. Legal research indicated that the adjudicator was wrong in law to decide that the claim for interest could not form part of a claim pursuant to the Public Works Creditors Payment Act. Moreover, the Ombudsman felt that there was no jurisdictional impediment to the Minister, under the legislation, preventing him from paying interest, providing that he found that the claim for interest was part of the contractor's obligation to the creditor. The investigation showed that there was an express contractual obligation by the contractor to pay interest to the complainant.

On March 20, 1981, the Ombudsman notified the Minister and the adjudicator of his tentative conclusions and tentative recommendations, pursuant to section 19(3) of the Ombudsman Act. It was the Ombudsman's possible conclusion that the Minister's conclusion that he does not have the authority to pay interest under the Public Works Creditors Payment Act was based on a mistake of law, and as a result, the Minister had failed to properly exercise his discretion under section 2(2) of the Act.

The Ombudsman further advised the Minister of his tentative recommendation that the Minister accept and consider the claim for interest as one properly made under the provisions of the Act.

The Minister was also advised that the complainant had twice incurred legal costs, once with respect to the

initial hearing, and again with respect to the hearing before the adjudicator. The Ombudsman indicated that the second set of costs need not have been incurred but for the erroneous interpretations of the Act accepted and acted upon by the Minister. The Ombudsman then further advised the Minister that it was open to him to recommend that the complainant receive from the Ministry his legal costs for the second hearing as equitable compensation to the complainant for costs incurred directly as a result of the erroneous interpretations of the Act.

The Minister responded to the tentative conclusion, stating that the previous Minister had not made an error in the initial exercise of his discretion to reject the entire claim, but that, as a result of the interpretation given to the legislation by the Ministry, the complainant might have suffered great hardship, and therefore the Ministry had reopened its consideration on humanitarian grounds.

The Minister gave two reasons for not paying interest, as follows: first, that the Minister had an absolute discretion under the Public Works Creditors Payment Act and he had decided to exercise that discretion against the complainant; and secondly, that the complainant's solicitor waived the interest claimed at the hearing before the adjudicator.

An authority exercising a statutory discretion must have regard to all the relevant circumstances, and must act within the intent and spirit of the legislation empowering him to decide the question before him. The discretion that is exercised cannot be total to the extent that the Minister can disregard relevant circumstances or the spirit of the legislation. The Minister must not misconstrue the scope of his discretion, which it seemed the Minister might have done in this case, by believing that the claim made by the complainant was initially not a valid one and that the Minister had no authority to pay a claim for interest.

The second reason given by the Minister for not paying interest was the assertion that legal counsel for the complainant, after consulting with the complainant, waived the claim for costs and interest either prior to or during the hearing before the adjudicator. The complainant and his counsel denied this assertion and there was no evidence in support of the Minister's position.

After reviewing carefully the arguments made by the Minister, the Ombudsman issued a report confirming his

opinion that the Minister's decision that he did not have the authority to pay interest under the Public Works Creditors Payment Act to the complainant was based on a mistake of law. In addition, the Ombudsman found that the Minister unreasonably exercised his discretion in not considering the complainant's claim for interest under the Public Works Creditors Payment Act.

It was the Ombudsman's recommendation that the decision of the Minister, to accept the recommendation of the adjudicator not to pay the claim for interest made by the complainant, be cancelled, and that the Minister accept and consider the claim for interest as one properly made under the provisions of the Public Works Creditors Payment Act.

Notwithstanding that he tentatively recommended that the Minister pay the legal costs on equitable grounds, the Ombudsman believed that in the context of this complaint a recommendation to pay legal costs should be based on the Public Works Creditors Payment Act. The legal research indicated that this was not possible, and the Ombudsman was not prepared to make a recommendation to the Minister that the legal costs be paid.

The Ombudsman received a response from the Minister stating that he disagreed with these conclusions. The Ombudsman then advised the Minister that his response was not adequate or appropriate, but that he would not be sending a copy of his report to the Premier.

In addition, the Ombudsman wrote to the complainant to advise him of the Minister's response which, in his opinion, was not adequate or appropriate. The Ombudsman also advised the complainant that he would not be sending a copy of his report to the Premier.

DETAILED SUMMARY NO. 15

This complaint against the Ministry of the Environment was brought to the attention of Office of the Ombudsman in September of 1979 by a resident of Northwestern Ontario. He complained that the siting of a water treatment plant, built by the Ministry earlier that year on property immediately adjacent to his, had devalued his residential property and he believed that the Ministry should compensate him for the devaluation.

On December 19, 1979, in accordance with section 19(1) of the Ombudsman Act, the Ombudsman wrote to the then

Minister of the Environment, to notify him of the nature of the complaint and of the Ombudsman's intention to conduct an investigation. In his subsequent statement of the Ministry's position, the Deputy Minister noted that his Ministry and other Ministries of the government had taken the position that an expropriating authority is not liable for claims for injurious affection related to depreciation in value of a property that is alleged to have occurred because of the existence of a works constructed by the authority in the vicinity of the claimant's property, but where no property has been taken from the claimant.

The results of the Ombudsman's investigation showed the complainant's two-story detached house to be located on a dead end street in a residential area on a lot 50 feet wide and 325 feet deep, backing onto a lake. The site of the water treatment plant had been formerly occupied by a house of similar age and style as the complainant's home.

The Ministry had retained the services of a consulting firm to design the plant and the funds were allotted in such a manner that they had to be spent within certain fiscal periods. Officials of the consulting firm explained that the lot adjacent to the complainant's property was thought to be suitable for the plant because a small water pumping station and three intake water mains already existed. By building on this site, it was estimated that costs could be reduced by using these mains, although they ultimately had to be replaced. In addition, a large portion of the site was already owned by the municipality, necessitating acquisition of only the property adjacent to the complainant's.

The plant is approximately three feet from the complainant's property line and six feet from the west wall of his house. The front of the plant is three feet farther from the centre line of the street than the complainant's house and at its widest point, is 115 feet wide. The above ground portion is 154 feet long, the first 38 feet being one story high and the remaining 116 feet 39 feet high. The rear portion of the plant is 72 feet long, most of it being underground, with only three or four feet above ground due to the slope of the land toward the lake. By comparison, the complainant's house is roughly 38 feet long, 44 feet wide (including the garage) and two stories high.

Contact with the Ministry of Revenue during the investigation showed that a reduction of \$15,600 had been

applied to the 1978 market value assessment of the complainant's property due to the proximity of the water treatment plant. A copy of an appraisal of the property was also obtained and showed a minus adjustment of \$30,000 due to the plant.

Based on the results of the investigation, the Ombudsman tentatively concluded that the Ministry had unreasonably and unjustly refused to compensate the complainant for devaluation caused to his property by the plant, and he tentatively recommended that the Ministry should take steps to determine the amount of the devaluation, if any, and compensate the complainant accordingly. Since the Ombudsman's tentative conclusion and recommendation might have adversely affected the Ministry, he afforded the Deputy Minister the opportunity to make representations. In response, the Ombudsman received a letter dated July 15, 1981, in which the Deputy Minister requested the Ombudsman's view on certain points unrelated to the facts of the investigation. In order to adequately respond to this letter, further research and investigation was conducted.

On September 23, 1981, the Ombudsman wrote to the new Deputy Minister, responding to the concerns raised in the July 1981 letter. The Ombudsman concluded his letter by indicating that his tentative conclusion and tentative recommendation remained unchanged.

On December 16, 1981, the Ombudsman wrote to the Deputy Minister pointing out that his Office had not yet received a response regarding the tentative conclusion and tentative recommendation, and suggested a meeting to discuss the matter. After telephone contact with the Deputy Minister's office, a letter was received from the Deputy Minister dated February 16, 1982, in which he stated that he regretted that he could not accept the Ombudsman's tentative conclusion that the Ministry's refusal to compensate the complainant had been unreasonable or unjust.

Again, on April 13, 1982, the Ombudsman wrote to the Minister of the Environment, and subsequently met with him on June 21, 1982 in an attempt to bring this complaint to a resolution.

Thereafter, on January 19, 1983, Ministry officials met with the complainant at his home, and he subsequently received compensation in the amount of \$25,000. The complainant felt that this was a fair and satisfactory resolution of his complaint and our file was therefore closed.

MINISTRY OF
GOVERNMENT SERVICES

DETAILED SUMMARY NO. 16

A complaint was made to the Ombudsman on August 23, 1979 concerning a pension loss suffered by the complainant as a result of a three-year transfer of employment arranged by her employer.

The complaint was treated initially as being directed against the Public Service Superannuation Board, which was notified of the Ombudsman's intention to investigate. During the investigation it became apparent that the complainant's employer, the Alcoholism and Drug Addiction Research Foundation, was also involved. The Foundation was accordingly notified of the investigation.

The investigation established the essential facts as being that on October 1, 1965 the complainant entered the employment of the Foundation and began making contributions to the Public Service Superannuation Fund (PSSF). At that time the PSSF offered a retirement annuity calculated on the average annual salary of the employee's best three years of earnings. On January 1, 1966, when the PSSF integrated with the Canada Pension Plan, the calculation was changed for all new employees entering the public service, and was in future to be based on the average annual salary of the retiring employee's best five years of earnings. Employees already in the public service, including the complainant, were guaranteed, by a provision in the Public Service Superannuation Act, a retirement annuity calculated on the former, more generous method: the average of the best three years. The guarantee, however, applied only if the employee had remained in the public service without interruption until retirement.

In 1969 the complainant was asked by her employer if she would become the director of a new course to train addiction counsellors. The course was to be sponsored jointly by the Foundation and a community college. She agreed and it was then arranged that she would terminate her employment with the Foundation and move for a period of three years to the college where the course was being offered. Apparently no consideration was given to what effect such a transfer of employment would have on the complainant's pension entitlement. A formal secondment, made with the consent of the Board, would have enabled her to continue her membership in the PSSF. No such secondment, however, was arranged.

On September 1, 1976 she resigned from the Foundation and entered the employment of the college. Her membership

in the PSSF ended and she began contributing to a new pension plan. After nearly three years, she resigned from the college and returned to the Foundation and again changed pension plans. In 1976 she retired and began receiving from the PSSF a retirement annuity calculated on the basis of the average of her best five years of earnings.

The complainant claimed initially that she satisfied the conditions of the guarantee contained in the Public Service Superannuation Act and that the Board should pay her an annuity calculated on her best three years of earnings. The Board did not agree and submitted to the Ombudsman, among other arguments, that her employment in the public service had been interrupted in 1969 when she was transferred to the college. Her right to the guarantee did not revive in 1972 when she returned to the Foundation.

The Ombudsman considered the information established by the investigation, the interpretation of the legislation and all relevant arguments relating to continuous service and the meaning of the term "public service". He concluded that, for the purpose of the Act, by terminating her employment with the Foundation in 1969, the complainant had left the public service. In doing so she had lost the benefit of the guarantee. The Board had thus correctly applied the legislation and the complaint against it could not be supported. The Ombudsman's file as it related to the Board was closed on June 30, 1982.

The complaint against the Foundation was that, in arranging for her transfer to the college in 1969, her superiors had failed to advise her properly and to consider the effect it would have on her pension entitlements.

In accordance with section 19(3) of the Ombudsman Act, the Ombudsman informed the Foundation that there appeared to be sufficient grounds for a report and recommendation which might adversely affect it. He gave an account of the information established by the investigation and advised of his tentative conclusions supporting the complainant and his tentative recommendation that the Foundation pay reasonable compensation for the complainant's loss. The Foundation was invited to make representations if it wished.

After some time spent clarifying details, the Foundation responded by sending a cheque for \$6,174.47 payable to the complainant, in full settlement of her claim.

The complaint thus being resolved to the complainant's satisfaction, the Ombudsman ended his investigation and closed his file on January 26, 1983.

MINISTRY OF
HEALTH

DETAILED SUMMARY NO. 17

The complainant contacted the Ombudsman's Office to complain about a decision rendered by the Ontario Health Insurance Plan not to pay claims submitted on his behalf relating to an out-of-province claim. It appeared that OHIP had refused to pay the charges for medical expenses that the complainant incurred while he was in Chicago. In particular, OHIP wanted the name of the doctor who performed the services and, in addition, it wanted an itemized bill from the cancer prevention clinic where the complainant was treated.

The complainant had made preliminary inquiries with OHIP and in his initial correspondence to OHIP he had enclosed a copy of the report which listed all of the tests he underwent at a cancer prevention clinic in Chicago. He also explained to OHIP that the clinic did not issue an itemized bill. Subsequently, he received further correspondence from OHIP informing him that his claim could not be accepted as the medical consultants reviewed it and they advised that since the service was not rendered by a registered medical practitioner, it was not a benefit of OHIP. A second reason for disallowing the complainant's claim was that the cancer prevention clinic in Chicago was not listed with the American Medical Association.

After some initial inquiries, the Ombudsman wrote to the General Manager of the Ontario Health Insurance Plan, in accordance with the requirements of the Ombudsman Act, and advised him of our intention to investigate this complaint. The General Manager was asked if he was prepared to give a statement of his Ministry's position on the complaint. We subsequently received a reply from the General Manager, stating that he could not be of assistance to the complainant, but that the complainant should provide documentation regarding the five doctors who attended him at the cancer prevention clinic, and submit claims individually. A copy of this letter was sent to the complainant for his comments. He replied outlining his dissatisfaction with OHIP's response to his contentions.

The Ombudsman informed the complainant that there is an onus on the claimant to provide OHIP with the information required under the regulations of the Health Insurance Act for out-of-province claims. We also advised him to write to either the cancer prevention clinic or his personal physician in Chicago to obtain statements other

than the list of tests he underwent. Subsequently, the Ombudsman obtained a statement from the cancer prevention clinic and forwarded it to the General Manager of OHIP, but unfortunately, OHIP's position on the complainant's claim had not changed.

The Ombudsman reviewed thoroughly the Health Insurance Act and pursuant regulations. Contact was made with the Coordinator, Hospital Support, Operations Branch of the Health Insurance Division of the Ministry of Health, who suggested that OHIP might consider reimbursement if it were evident that doctors were involved in interpreting the results of the complainant's medical tests, and that they were paid for the services they provided. Thereafter, proper authorization was obtained from the complainant so that our Office could have access to his medical records at the cancer prevention clinic in Chicago.

After receiving evidence of the complainant's physical examination and the names of the doctors who administered it at the cancer prevention clinic, our Office forwarded copies of such evidence to the General Manager of OHIP. Enclosed with this evidence was information stating the fact that the physicians who administered the test were not employees of the cancer prevention clinic, and that they were licensed by the State of Illinois. A request was made to reconsider the complainant's claim.

Shortly thereafter, a staff member of OHIP called this Office and informed us that the complainant's claim for costs incurred while he was in the United States in 1980 would be processed and that he would be reimbursed \$95.00 in U.S. funds at the 1980 OHIP Schedule of Benefits rate as soon as possible. Later, a letter was received from the Acting General Manager of OHIP confirming this action by OHIP. Accordingly, our file was closed as the complaint was satisfactorily resolved.

MINISTRY OF
LABOUR

THE WORKER'S COMPENSATION BOARD

DETAILED SUMMARY NO. 18

In a letter dated September 4, 1981, the complainant's M.P.P. advised the Ombudsman of a worker's dissatisfaction concerning a decision of the Appeal Board of the Workers' Compensation Board dated July 23, 1981. The worker was dissatisfied with the Appeal Board's decision to deny entitlement for a chest disability as arising out of and in the course of his employment.

The Board was advised of the Ombudsman's intention to investigate the matter. The Vice-Chairman of Appeals indicated that the Board did not wish to make a statement and the file was then assigned for investigation.

The investigation showed that in March, 1968, the complainant submitted a claim to the Board for silicosis as a result of his employment with a mining company during the years 1928 to 1968. His claim for compensation benefits was denied by the Board as it had been found by the Silicosis Referee Board that there was "insufficient radiographic change to warrant a diagnosis of silicosis".

In March, 1972, the complainant was hospitalized for a lung biopsy. The preoperative diagnosis was probable silicosis. Upon microscopic examination, the Board's consultant concluded that there was no evidence of silicosis. It was, however, noted that the complainant had a large pulmonary artery which was occluded by an embolus. The x-rays were also reviewed by the Advisory Committee on Special Chest Diseases in August, 1973 which determined that there was no evidence of silicosis. The Board's own specialist in chest diseases found that the complainant was suffering from chronic bronchitis and arteriosclerotic heart disease.

In 1979, the complainant's M.P.P. submitted to the Appeal Board the report of an independent pathologist, dated July 19, 1979, which concluded that the complainant's test results indicated a moderate amount of silica in the lungs.

This opinion was referred to the original examining pathologist, who argued that the mere presence of silica in the lungs did not constitute silicosis. He reiterated his previous opinion wherein he formed the view that:

... the biopsy does nothing to support a suggestion that the complainant has pulmonary silicosis.

Indeed, it stands to the contrary. If a diagnosis of pulmonary silicosis of significant degree is to be made, it must depend on radiological and functional studies, and must assume that the biopsy is not representative.

Upon further review, the Advisory Committee on Occupational Chest Diseases of the Ministry of Labour also supported the pathologist's opinion and concluded that "there is not enough radiological evidence to diagnose pulmonary silicosis, although, the few nodules seen on the x-ray films could be silica related."

The Board also obtained a further opinion from another specialist in chest diseases. In a memo dated June 6, 1980, the specialist stated:

It is evident that the absence of radiological changes compatible with silicosis and the definitely negative report by the pathologist with respect to silicosis rules out any entitlement for a silicotic chest disability as claimed by the injured worker.

As part of our investigation into this complaint, we contacted the independent pathologist and asked him to review the complainant's file. Specifically, we asked the pathologist to comment on whether the complainant would be considered disabled given the results of the pulmonary function tests.

In a telephone conversation of July 13, 1982, the specialist advised that the most disabling factor to the complainant's condition would be the shortness of breath which was attributable to his heart problem. Although the pathologist remained of the opinion that there was evidence to indicate mild silicosis, the clinical evidence indicated that this was not very active. The pulmonary function studies appeared satisfactory to him.

After reviewing this additional information, the Ombudsman concluded that the Appeal Board had not been unreasonable in its decision and advised the complainant and the Board in a report dated September 14, 1982, that the complainant's file would be closed.

DETAILED SUMMARY NO. 19

The complainant advised the Ombudsman in a letter dated November 12, 1980 that he was dissatisfied with a decision of the Appeal Board of the Workers' Compensation Board dated September 3, 1980. Specifically, he contended that the Board was unreasonable to deny him entitlement for a loss of hearing which arose out of and in the course of his employment. After determining the Ombudsman's jurisdiction to investigate, the Board was notified of the substance of the complaint.

The investigation showed that the Appeal Board had denied the complainant entitlement to benefits for a bilateral sensori-neural hearing loss because the condition was not occupationally induced. The Appeal Board concluded that the complainant was not sufficiently exposed at work to unacceptable noise levels to warrant entitlement for his hearing loss. The Board's policy indicated that for entitlement to be granted the worker should have been exposed to 90 decibels (A), 8 hours a day, for a five-year period.

During the course of the investigation, the Ombudsman came to the possible conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board was "unreasonable" to find that the complainant did not have entitlement for industrial hearing loss. In support of his conclusion, the Ombudsman noted that in 1976 and 1978, the complainant was seen by an otorhinolaryngologist who diagnosed a noise-induced hearing loss. This diagnosis was confirmed by the Board's doctor on February 8, 1979. There was no evidence to indicate that the complainant was exposed to high noise levels at any time outside of his employment. Further, the complainant had been employed by the accident employer since 1952. From 1952 until 1958, he worked in positions which did not entail exposure to high noise levels. From 1958 on, however, he worked as a crane man. He has continued in this position to date. Since 1958, the complainant was exposed on a continuous basis to noise levels ranging between 82 and 92 decibels (A) and levels exceeding 90 decibels (A) to a maximum of 115 decibels (A) on an intermittent basis. Between 1952 and 1973, these levels were approximated, based on testing done in 1978 and 1980. No testing was done between 1952 and 1973. The Ombudsman also indicated that it might be open to him to recommend, pursuant to section 22(3)(c) of the Ombudsman Act, that the Board vary its decision and allow the complainant's claim for hearing loss as being occupationally induced, and upon having done so, direct

the Claims Branch to adjudicate his entitlement to disability benefits.

The Workers' Compensation Board and the accident employer were accorded an opportunity, pursuant to section 19(3) of the Ombudsman Act, to make submissions concerning the Ombudsman's possible conclusion and recommendation.

The Board indicated that it was not prepared to implement the Ombudsman's possible recommendation because further testing, undertaken by the Board subsequent to receipt of the Ombudsman's 19(3) letter, had not established exposure to hazardous noise levels as defined by the Board. The employer agreed with the Board's position.

After considering these submissions, and obtaining a further medical opinion regarding the issue under investigation, the Ombudsman issued his report pursuant to section 22 of the Ombudsman Act, recommending that the Board revoke its previous decision and recognize the complainant's hearing loss as being occupationally induced and award the appropriate benefits.

In a letter dated September 29, 1982, the Chairman of the Board advised the Ombudsman:

I am pleased to inform you that the Board, having regard for all of the circumstances in this case, and by application of the Board's policy of Benefit of Doubt, has concluded that [this claimant] has entitlement under the Workmen's Compensation Act for deafness by reason of his exposure to noise at work.

[The claimant's] file has been referred to the appropriate operating division so that benefits flowing from this decision can be calculated.

The complainant was advised by letter on October 27, 1982 that his file would be closed, as the complaint had been resolved.

THE WORKER'S COMPENSATION BOARD

RECOMMENDATIONS DENIED

DETAILED SUMMARY NO. 20

On August 17, 1977 the Appeal Board of the Workers' Compensation Board rendered a decision denying the complainant entitlement to benefits for his back disability. On January 13, 1978 a letter from the complainant was received by the Ombudsman requesting that he investigate this decision.

After receiving a reply from the Vice-Chairman of Appeals in response to the Ombudsman's notice of intent to investigate this complaint, the file was assigned for investigation.

The investigation of this complaint showed that the complainant's work involved heavy lifting and that over a period of time he had complained of low back pain to his employer. Ten years after starting that job, and five years after his first complaint to his employer, he was examined by an orthopaedic specialist who subsequently performed an intra-transverse fusion. It was necessary nine months later to repeat this operation.

In denying the complainant entitlement to benefits, the Appeal Board concluded, ".... due to a lack of continuity of symptoms, treatment and complaints and the fact that no accident was ever reported to the company", the complainant's disability did not result from his employment. The Appeal Board panel, in reaching this decision, did not obtain any medical advice regarding the relationship between the complainant's disability and his job. There was, however, a report from the operating specialist that the disability was related to his work.

During the course of the Ombudsman's investigation, he formed the view that it might be open to him to conclude that the Appeal Board was unreasonable to find that the complainant did not have entitlement for a back disability as arising out of and in the course of his employment. In support of his possible conclusion, the Ombudsman noted that the Board had previously acknowledged that the work was heavy and a causal relationship to the work had been established by the treating physician. The Ombudsman made the tentative recommendation, pursuant to section 22(3)(c) of the Ombudsman Act, that the Board reconsider its decision and grant the complainant entitlement to benefits for a back disability as arising out of and in the course of his employment.

Since it seemed to the Ombudsman that the Board and the employer could be adversely affected by his tentative

conclusion and recommendation, he afforded the Board and the employer an opportunity to make representations pursuant to section 19(3) of the Ombudsman Act.

In its response to the Ombudsman's possible conclusion, the Board indicated that it did not believe the medical evidence demonstrated a relationship between the complainant's back disability and his employment. In the Board's view, degenerative disc disease was the precipitating factor in the complainant's disability, rather than the employment. The employer indicated that the decision would have to be made by the Workers' Compensation Board based on medical evidence received and that the company was not in a position to refute the medical evidence or to question the Appeal Board's decision. The Ombudsman carefully considered these representations.

In his report dated January 26, 1983, the Ombudsman concluded, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board was "unreasonable" to conclude that the complainant's back disability was not aggravated by his work, as the medical evidence clearly indicated a relationship existed between the complainant's employment and his disability. Accordingly, the Ombudsman recommended that the Board should revoke its decision and grant the complainant entitlement to benefits for a back disability as arising out of and in the course of employment.

Prior to formally responding to the Ombudsman's report, the Board submitted an opinion from a doctor employed by the Board, for his consideration. The doctor indicated that he was not prepared to disagree with the Board's position.

The Ombudsman considered this submission and advised the Board that he would not alter his recommendation.

No formal response to the Ombudsman's recommendation was subsequently received from the Board and on March 31, 1983, the Ombudsman exercised his discretion and referred the matter to the Premier for consideration. The file was then closed.

DETAILED SUMMARY NO. 21

On October 29, 1981 and December 23, 1981 the Appeal Board of the Workers' Compensation Board rendered decisions denying the complainant a partial commutation of his pension to pay off the mortgage on his home. During an

interview on November 25, 1981, the complainant requested that the Ombudsman's Office investigate this decision.

The Board was subsequently notified of the Ombudsman's intent to investigate and the file was assigned to a staff member for investigation.

Investigation of the complaint revealed that on November 27, 1972, at the age of 22, in the course of his employment, the complainant suffered a crushing injury to his left foot during a rockslide. A Symes amputation, removal of the foot above the ankle, was performed in March of 1973. After training and fitting for a prosthesis in 1973, the complainant enrolled at a college for a degree in Business Administration under the auspices of the Board's Rehabilitation Services. The complainant was awarded a 25% pension in January of 1977. After five years of steady employment as an auditor with the Department of National Revenue, he applied to the Board for a partial commutation of his pension to pay off the first mortgage on his house, which was denied in the aforementioned decisions.

During the course of this investigation, the Ombudsman came to the tentative conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board had acted unreasonably by denying the complainant's request for a partial commutation of his pension on the ground that it was not in his best long-term interest. The Ombudsman, in arriving at his tentative conclusion, referred to the economic arguments advanced by the complainant, which demonstrated that a commutation would result in a \$3,000 annual surplus; the steady nature of the complainant's job; and his successful efforts at rehabilitating himself. The Ombudsman made the possible recommendation, pursuant to section 22(3)(g) of the Ombudsman Act, that the Appeal Board revoke its decisions and award the complainant the partial commutation requested.

Since it seemed to the Ombudsman that the Board and the employer could be adversely affected by his tentative conclusion and tentative recommendation, he afforded them an opportunity to make representations pursuant to section 19(3) of the Ombudsman Act.

In its response, the accident employer stated that it had no objection to the commutation. The Board stated, in its response, that one of the policy requirements for commutation was that it must constitute a new or continuing rehabilitation measure and show evidence of being to

the injured worker's best long-term interest. The Board pointed out that while the commutation might be in the complainant's best long-term interest, it did not constitute a new or continuing rehabilitation measure as the complainant was already rehabilitated. The Board concluded by stating that, in view of adherence to general policies on commutation, it was unable to agree that its decisions were unreasonable. The Board, therefore, did not propose to take any action to implement the Ombudsman's tentative recommendation.

After carefully considering the Board's representations, the Ombudsman, in his report dated February 24, 1983, concluded pursuant to section 22(3)(g) of the Ombudsman Act, that the Appeal Board was unreasonable in denying the complainant's request for a partial commutation. It was the Ombudsman's opinion that the Board denied the commutation because the complainant did not meet the strict wording of requirements set out in its policy for the granting of commutation. Further, he concluded that the Board had fettered its discretion in this instance by not looking at the real merits of the request. Since the legislative power to commute is clear, and the Board ought not to apply its policies on commutation rigidly as preconditions in all cases, it was the Ombudsman's opinion that the Board was unreasonable in stating that an individual who had been rehabilitated could not be eligible for commutation. As the complainant had shown the enterprise and fortitude to rehabilitate himself and had demonstrated the economic benefits of a commutation, the Ombudsman recommended that the complainant be granted the partial commutation he requested.

On March 31, 1983, the Ombudsman notified the Chairman of the Workers' Compensation Board and the complainant that he had decided to exercise his discretion and refer the matter to the Premier, because a reasonable time had elapsed following his report and there was no adequate or appropriate action by the Workers' Compensation Board. The file was then closed.

On April 26, 1983 (after the 1982/83 fiscal year end), the Board responded further to the Ombudsman's report, maintaining it had not fettered its discretion in this case. In the Board's view the long-term best interest of the employee would be served by the continuation of the pension, which would be increased by legislative amendment, as a dependable source of income. The Board opined that this benefit outweighed a short-term financial relief to the worker if his mortgage were to be discharged. The Board therefore declined to implement the Ombudsman's recommendation.

DETAILED SUMMARY NO. 22

The complainant's Member of Parliament requested that the Ombudsman investigate a decision dated December 5, 1973, of the Appeal Board of the Workers' Compensation Board. The Board denied the complainant entitlement to benefits for a right leg amputation resulting from his accident at work on July 7, 1964, because it found that the complainant had not been employed as a workman in an industry which was liable to contribute to the Workers' Compensation Board's Accident Fund, as his employer did not come within Part 1 of the Workers' Compensation Act.

In April, 1963 a family-run company was incorporated to carry out its investors' concept of erecting and managing a space museum, which consisted of a building with a tower. The company leased the necessary land and handled completely the contracting for construction of the tower, while another corporation run by the same family acted as agent in arranging or letting the contracts for the construction of the building.

The company hired the complainant to ground the tower against the danger of lightning. On July 7, 1964 the complainant fell while working and sustained numerous fractures. Complications necessitated amputation of his right leg in 1974.

During the course of the investigation, the Ombudsman came to the possible conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board decision was unreasonable. The Ombudsman found that from the start the company contemplated taking an active role in the construction phase as well as the operating phase of the museum and did, in fact, become the prime contractor for the construction of the tower. The Ombudsman's tentative opinion was that the company's business was the construction and operation of exhibitions and museums. Such construction work came within the industries set out in Schedule 1 of Regulation 834 of the Workers' Compensation Act, and therefore the company ought to have been classified as a Schedule 1 employer. The Ombudsman tentatively concluded that the complainant was hired by the company as an employee to perform work related to the construction phase of the museum, and, as an employee of the company which was the principal during the construction phase of the tower, should have been afforded the same protection given to employees of contractors or sub-contractors involved in the construction phase of a project under sections 9(1) and 9(3) of the Workers' Compensation Act.

The Ombudsman indicated that it might be open to him to recommend, pursuant to section 22(3)(c) of the Ombudsman Act, that the Appeal Board cancel its decision and grant the complainant the appropriate benefits as he was employed as a workman in an industry which was liable to contribute to the Board's Accident Fund.

Pursuant to section 19(3) of the Ombudsman Act, the Workers' Compensation Board and the employer were accorded an opportunity to respond to the Ombudsman's tentative conclusion and recommendation. In its response, the Board took the position that the company could not properly be found to have been in the construction business, and therefore the Board could not give effect to the Ombudsman's possible recommendation. The employer indicated that it was in the business of operating a space museum, and had not assumed the role of a contractor with respect to the construction of the museum building or the tower.

Upon consideration of these responses, the Ombudsman noted that neither the Board nor the company which employed the complainant appeared to recognize that the company could properly have been engaged in more than one industry simultaneously, that is, operating a space museum, and engaging in a construction undertaking. "Industry" was defined in section 1(1)(m) [now s. 1(1)(o)] of the Workers' Compensation Act to include "establishment, undertaking, trade or business".

It was the Ombudsman's view that the Board, in coming to the conclusion it did with respect to the industry in which the company was engaged, had wrongly incorporated a test relating to the "prime purpose" of a company's business, into section 123 [now section 127] of the Act. Had the Legislature intended such a narrow test to be applied, it would have stated so clearly.

The Ombudsman concluded that at the time of the accident, the complainant was employed as a worker in the construction industry, which is a Schedule 1 industry, and ought to have received benefits in accordance with the spirit and intent of the Workers' Compensation Act. It was the Ombudsman's opinion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board's decision dated December 5, 1973, was unreasonable and unjust in denying the complainant's claim for benefits. He therefore recommended, pursuant to section 22(3)(c) of the Ombudsman Act, that the Workers' Compensation Board cancel the Appeal Board decision and award the complainant the appropriate benefits.

The Board obtained an independent legal opinion dated July 30, 1982, which stated that the Ombudsman erred in looking at activities rather than purposes. The company built the museum for its own personal use, so as to be in the museum business, and not to sell for profit, which would have put it in the construction business. One determines whether or not an activity is covered by the Act by looking at the industry within which the activity is performed, not by simply looking at the activity.

On September 29, 1982 the Chairman of the Board advised the Ombudsman that the Board had adopted this legal opinion as a statement of the Board's position, and was not prepared to implement the Ombudsman's recommendation.

The Ombudsman acknowledged that while the Board could reasonably have come to the conclusion that the company was in the business of operating a space museum, it could also have reasonably come to the conclusion that the company was, at the time in question, in the construction business. Bearing this in mind, as well as the real merits of the case and the spirit and intent of the Workers' Compensation Act, the purpose of which is to compensate workers for injuries and loss of earnings related to accidents at work, the Ombudsman remained of the opinion that the Appeal Board's decision was unreasonable and unjust.

Given that the Board was not prepared to implement the Ombudsman's recommendation, the Ombudsman provided the Premier with a copy of his report dated June 18, 1982, and the Board's response, pursuant to sections 22(4) and 22(5) of the Ombudsman Act. The Workers' Compensation Board and the complainant were advised of this and the file was closed on November 10, 1982.

MINISTRY OF

MUNICIPAL AFFAIRS AND HOUSING

DETAILED SUMMARY NO. 23

This complaint concerned a Housing Authority in Northern Ontario which had issued notice to a senior citizen requiring her to give up possession of her apartment for non-payment of rent. The complaint was brought to the Office of the Ombudsman at hearings held in June of 1982. On July 28, 1982, the Ombudsman wrote to the Chairman of the Housing Authority, notifying him of the nature of the complaint and of his intention to conduct an investigation. A statement of the Housing Authority's position was received in a letter dated August 5, 1982.

The investigation revealed that the complainant and her late husband had jointly applied to the Housing Authority for subsidized housing in 1971, indicating their income and unspecified real estate assets worth either \$3,000 or \$5,000. Upon her husband's death in 1973, his estate, which consisted of three 100 acre lots, was transferred to the complainant. In late 1973, the complainant was accommodated in the apartment which she occupied at the time of making the complaint. At that time, the value of assets held by a tenant or an applicant for Ontario Housing did not figure in determining eligibility, need for housing, or rent, the only financial consideration being gross income. Assets were relevant only if they produced income.

Under the terms of her lease, the tenant was to use and occupy the leased premises only as a private residence for herself, and the rent was based on information she supplied concerning her gross income. In signing the lease, the tenant agreed to furnish the landlord with an updated statement of her gross income from all sources as soon as any change in income occurred. Clause 13 of the lease stated that if the tenant furnished any incorrect or misleading information as to her income or assets, the rent was to be recalculated, based on the corrected information. If such recalculation indicated that additional rent was owing, the tenant was to immediately pay such additional rent.

The Ontario Housing Corporation's policy concerning non-income-producing assets, which first came into effect on June 1, 1980, defined non-income-producing assets as all those assets, investments or holdings that do not bear interest, including assets that have been transferred or given away. The policy concerning transferred assets was also to apply to all current tenants at the time of lease renewal, although a tenant's total amount of transferred

assets was to be reduced or written down by \$2,000 a year. Effective April 1, 1982, the method of calculating rents for tenants with non-income-producing assets was altered so that a rate of return was applied to the value of such assets to give an imputed income. Rent was to be calculated based on imputed income and all other income.

The Housing Authority did not inform its tenants in 1980 of the introduction of the new policy, nor did it review its files or make inquiries to determine whether its senior citizen tenants had non-income-producing assets which should be included in the rent calculation. The Housing Authority annually sent forms to tenants on which they were to provide the information used to calculate rent. Several different forms had been used over the years, but all referred only to income, with only the most recent form, which was developed after January 1, 1982, specifically requesting information on assets, and then only with regard to real estate.

The investigation showed that early in 1980, the Housing Manager began to notice that the complainant's son's vehicle was often parked outside her apartment. The Housing Manager informed this Office that this raised some concerns that the complainant's son might have been occupying the premises, contrary to the lease, and this matter was brought to the complainant's attention. Subsequent inquiries by the Housing Authority indicated that the complainant owned the land which she had inherited from her husband, and the assessment on the property was found to be \$39,500. The Housing Authority then wrote to the complainant, informing her that it had recently learned she was the owner of land. The policy with regard to non-income-producing assets as it applied to calculating rent was explained, and the complainant was informed that her rent would not exceed the local market rent for similar accommodation. Some two weeks later, the complainant conveyed the land to her son, retaining a life interest.

The Housing Authority subsequently learned of the transfer and on March 23, 1982, the Housing Manager wrote to the complainant, informing her that in keeping with clause 13 of the lease, her rent was to be recalculated to \$248 from \$110, based on the assessed value of the property, retroactive to February 1, 1982. This letter stated that the policy pertaining to non-income-producing assets was also applicable to assets which had been transferred. The complainant continued to pay \$110 a month because she felt the increase was not justified, although the Housing Authority considered the difference between the rent calculated as owing, and the amount paid, to be

arrears. On May 25, 1982, a notice to vacate based on rental arrears was issued to the complainant.

In his letter to the Ombudsman of August 5, 1982, the Chairman of the Housing Authority noted that the complainant had only made one reference to her property -- on the original application in 1971 -- and no mention of it was made on any subsequent annual income review. An examination of the forms used by the Housing Authority shows that information on assets was not requested until September 1, 1982.

The Housing Authority stated that it relied on clause 13 of the expired lease which, in its opinion, put an onus on the complainant to report assets. In the Ombudsman's opinion, the complainant could not have been said to have furnished any incorrect or misleading information as to her income or assets, since the Housing Authority had not requested such information on its income review forms. Further, although clause 13 refers to assets, the lease puts an express onus on tenants only with respect to income. In addition, the Ombudsman considered the provisions of the Landlord and Tenant Act, which requires landlords to give tenants 90 days' notice of a rent increase, and states that if this notice is not given, the rent increase is void. As of February 1, 1983, the Housing Authority had calculated the complainant's rent to be \$212. The complainant had not received notice in accordance with the Landlord and Tenant Act with respect to the increase from the former rent of \$110.

In the Ombudsman's opinion, on the basis of the investigation conducted, it was open to him to make a report which would justify certain tentative conclusions and recommendations. In accordance with section 19(3) of the Ombudsman Act, the Ombudsman wrote to the Chairman of the Housing Authority on February 8, 1983, informing him of the results of the investigation and stating that he could possibly conclude that: 1) the Housing Authority acted unreasonably in: (a) not notifying its senior citizen tenants of the 1980 change in policy regarding imputed income on non-income-producing assets; (b) not altering its annual income review forms at that time to provide tenants with the opportunity to report their non-income-producing assets; and (c) not notifying the complainant of all aspects of the policy, particularly with regard to transferred assets, in its letter of December 8, 1981; 2) the Housing Authority acted unreasonably in increasing the complainant's rent retroactively, based on clause 13 of the lease; 3) the Housing Authority acted contrary to the provisions of the Landlord and Tenant Act in increasing

the complainant's rent and the increase was therefore void; and 4) the Housing Authority unreasonably issued to the complainant a notice to vacate for non-payment of rent.

The Ombudsman also stated in his letter to the Chairman that he could possibly recommend that: 1) the Housing Authority revise its annual income review form to request from senior citizens details on all non-income-producing assets that they might have; 2) the Housing Authority inform its senior citizen tenants of all aspects of the policy introduced in 1980 relating to non-income-producing assets; 3) the Housing Authority take no further action in evicting the complainant and that it remove from her account all arrears, since the increase in rent was void; 4) the Housing Authority give the complainant 90 days' notice of any rent increase as required by the Landlord and Tenant Act, and that any imputed income should be based on the 1980 market value assessment of the land, written down by \$2,000 per year.

As required by section 19(3) of the Ombudsman Act, the Ombudsman invited the Chairman to make representations regarding the possible conclusions and possible recommendations. These were received in a letter dated March 8, 1983, in which the Housing Authority stated its disagreement with the Ombudsman's possible conclusions. With respect to his possible recommendations one and two, the Housing Authority agreed to implement these through revisions to its annual income review form. As for possible recommendations three and four, the Housing Authority gave the complainant 90 days' notice of a rent increase as required by the Landlord and Tenant Act, and agreed to impute to her income based on her transferred non-income-producing assets based on the 1980 market value assessment written down by \$2,000 a year.

The complainant subsequently advised this Office that on March 1, 1983, the Housing Authority notified her that her rent would increase to \$223, effective June 1, 1983. All arrears of rent were removed from her account and the Housing Authority agreed to take no further action to evict her on this ground. Although the complainant felt that \$223 was a considerable amount to pay in rent, she nevertheless indicated that her complaint had been resolved satisfactorily, and the Ombudsman's file on this matter was accordingly closed.

MINISTRY OF
MUNICIPAL AFFAIRS AND HOUSING
RECOMMENDATION DENIED

DETAILED SUMMARY NO. 24

On December 20, 1982 the Ombudsman issued his report entitled "Report of the Ombudsman of Ontario as a result of Certain Complaints in Relation to the North Pickering Project". In it he disclosed that he had reached agreement with the Minister of Municipal Affairs and Housing on a revised settlement proposal under which the majority of complainants (95 of 113) would receive additional compensation for their land from the Province. In essence, the Ministry agreed to update the settlements from the date of appraisal to the date of offer, and to pay the former landowners the difference between the revised market value and the compensation which they had received. The Ministry also agreed to pay interest at the rate of 6% per annum (the rate prescribed by section 35(1) of the Expropriations Act) until a cutoff date.

However, the Ministry did not agree to include in the settlement 18 former landowners who, in its view, "were fully knowledgeable about the value of these properties and made calculated business decisions to complete the sale at the time to the Ministry". These 18 landowners came to be known as "investors", in that they were holding relatively large tracts of land (ranging in size from 50 to over 153 acres) for investment purposes. Many of them were companies formed for the purpose of acquiring land from capital provided by individual investors, later selling the land at a profit to those investors.

The Ombudsman acknowledged that these owners were more sophisticated and knowledgeable than the ordinary landowners, and that some of them had considerable experience in buying and selling land. He accepted the Ministry's submission that these landowners made calculated business decisions to sell, rather than to wait for expropriation.

The fact remained, however, that the Government neglected to pay fair market value for these lands, since the appraised values were not updated sufficiently by Project officials. Even "knowledgeable" owners were entitled to receive fair market value.

The Ombudsman noted that, had these owners waited for expropriation and had their claims for compensation determined by the Land Compensation Board, the Board would have had no regard to the character of the owners. He pointed out that if the Government wanted to curb land speculation, it was open to it to introduce appropriate legislation.

It was, accordingly, the Ombudsman's opinion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Ministry of Housing had unreasonably omitted to pay the 18 landowners excluded from the revised settlement proposal fair market value for their lands. It was his further opinion that the basis upon which they were excluded by the Ministry of Municipal Affairs and Housing constituted improper discrimination under the same subsection.

The Ombudsman recommended, pursuant to section 22(3)(b) and (g) of the Ombudsman Act, that the 18 landowners be subject to the same terms proposed by the Ministry in its revised settlement proposal.

On January 11, 1983, the Minister of Municipal Affairs and Housing replied to the Ombudsman's report. In his reply, he stated, "After careful consideration of my responsibilities for the expenditure of public funds, I am not prepared to recommend that the Government accept your recommendation ... to include 18 additional landowners in the revised settlement proposal."

After considering the matter further, the Ombudsman decided that he would send his report and recommendation to the Premier, pursuant to section 22(4) of the Ombudsman Act. This was done by letter dated January 21, 1983, and the Minister of Municipal Affairs and Housing was so informed.

On February 24, 1983 the Premier acknowledged receipt of the Ombudsman's report and recommendation. He advised that Cabinet had concurred with the Minister's proposal.

The Ombudsman notified the 18 landowners and their counsel of the results of his investigation and their files were then closed.

MINISTRY OF
NATURAL RESOURCES

DETAILED SUMMARY NO. 25

The complainant's solicitor wrote to this Office on December 4, 1980, concerning a decision of the Ministry of Natural Resources. The Ministry had refused to sell the complainant a parcel of Crown land on which he had built a cabin some twenty years previously under the belief that the land was his. This, the complainant contended, was unreasonable.

The Ombudsman notified the Deputy Minister of Natural Resources of his intention to investigate this complaint. The subsequent investigation revealed that in 1976 a survey had shown that the cabin was occupied periodically by the complainant, and that docks and a boathouse belonging to a neighbouring lodge owner were located on Crown land. At that time, the complainant was an employee of the Ministry. The complainant was originally instructed to remove his cabin from Crown land. Because the complainant was employed by the Ministry, it was not, in any event, possible for the Ministry to sell him the land. However, after negotiations, an arrangement was made whereby the complainant would sell the cabin to the owner of the neighbouring lodge to be held in trust, and the lodge owner would purchase the land on which the docks, boathouse and cabin were located.

After this arrangement was made, allegations were made to Ministry officials that the cabin did not belong to the complainant but was, rather, Crown property which the complainant had occupied without authorization. As a result, the Ministry undertook an investigation into the history of this cabin and determined that the cabin was Crown property.

The complainant then produced two sworn affidavits for the Ministry's consideration. The first, from a former owner of the lodge, attested to the fact that the complainant had paid him [the former owner] \$200 for the land in question, as he [the former owner] had been under the belief that the land was part of his lot. The second affidavit, from a former employee of the Ministry now retired, attested to the fact that the complainant had been given permission to salvage certain building materials which the complainant had then used to construct the cabin.

The Ministry, however, based on the results of its investigation, remained firm in its decision and the complainant was instructed to remove his improvements from the "Ministry's" cabin.

The Ombudsman's investigation revealed that the docks and boathouse located between the lodge and the complainant's cabin (now known to be on Crown land) were built some time prior to 1956. The former lodge owner had purchased the lodge at that time. As noted, the former lodge owner also acknowledged that he did receive money from the complainant for the land, believing it to be his to sell. There was, however, no record of this transaction between the complainant and the lodge owner on the title to the property, nor was there any written deed or receipt for money paid, or even an application to sever the lot from the lodge property.

It was agreed by all parties that the basic structure, consisting of a 12-foot x 24-foot wood frame, was originally a building at a roadside park formerly under the jurisdiction of the Ministry of Transportation and Communications. The park was transferred to the Ministry of Natural Resources about 1956 or 1957 for development as a provincial park.

The complainant stated that he had asked permission to salvage the building after it had been taken down at the park, and was given permission to do so by the then District Forester. According to the complainant, the cabin was then rebuilt on the land he had purchased from the lodge owner. From 1969, when the opening of a new highway made access to the cabin site much easier, the complainant's family began to make use of the cabin on a regular basis. In 1970, the complainant began to make substantial improvements.

In 1973, when the Provincial Land Tax Roll was created by the Ministry of Natural Resources, the complainant was enrolled as owner and has paid the taxes since. The fact that the complainant was improving the property was known to Ministry personnel. During the Ombudsman's investigation of this complaint, those persons previously interviewed during the Ministry's investigation who, it appeared, might have direct knowledge of this matter, were interviewed again. Not surprisingly, given the amount of time that had elapsed, the recollections of these persons were vague and contradictory. Some persons were very definite that the cabin was Ministry property. Others recalled that it had always belonged to the complainant.

The Ombudsman came to the tentative conclusion that the decision of the Ministry of Natural Resources to refuse to sell the lands on which the cabin is located and to order the complainant to remove his improvements from the cabin was unreasonable and oppressive within the

meaning of section 22(1)(b) of the Ombudsman Act. Accordingly, the Ombudsman reported this possible conclusion to the Deputy Minister by letter dated January 21, 1982 together with his possible recommendation that the Ministry should proceed as quickly as possible to regularize the occupation of the land in question by the complainant. The Ministry was afforded the opportunity to make representations respecting the tentative conclusion and tentative recommendation, but the Minister advised the Ombudsman that he had no further information to offer.

After reconsidering this matter, it was the Ombudsman's opinion that the decision of the Ministry to refuse to sell the lands in question and to order the removal of the complainant's improvements from the cabin was unreasonable and oppressive within the meaning of section 22(1)(b) of the Ombudsman Act. The Ombudsman came to this conclusion on the unique facts of this case. The complainant had claimed that the location of the cabin on Crown property could be explained by an honest but mistaken belief in title to the property. His claim was substantiated to some degree by the sworn testimony of the former lodge owner. As well, the complainant was enrolled as owner of the land on the Provincial Land Tax Roll in 1973, thereby putting the Ministry on notice of his claim to the land.

The dispute between the Ministry and the complainant over the ownership of the cabin was more difficult. However, it was noted that the complainant had gone unchallenged in his first ten years of occupation of the cabin. The Ombudsman also considered the fact that the cabin was not in a location which could reasonably be described as remote. It was located next to a lodge in an area where there are many private cabins. Finally, the Ombudsman considered that the order to the complainant to remove his improvements would have destroyed the value of both the cabin and the improvements themselves.

Based on this conclusion, the Ombudsman recommended, pursuant to sections 22(3)(c) and (g) of the Ombudsman Act, that the Ministry should proceed as quickly as possible to regularize the occupation of the land in question by the complainant. By this time, the complainant was no longer an employee of the Ministry and it was possible for the Ministry to deal directly with the complainant in this matter.

In a letter dated April 13, 1982, the Deputy Minister advised that he accepted the Ombudsman's recommendation

and that he would instruct his staff to begin the necessary work to complete a sale and patent of the land in question. The matter having been resolved, the file was then closed.

MINISTRY OF
REVENUE

DETAILED SUMMARY NO. 26

This complaint against the Ministry of Revenue was referred to this Office of the Ombudsman on October 19, 1981 by Mr. David A. Tickell, Ombudsman of Saskatchewan, to whom the complaint had originally been made.

On May 26, 1981, while temporarily in Ontario, the complainant's husband had purchased a moped on which he paid \$21 in retail sales tax. Since the moped was not intended for use in Ontario, he felt that he should be exempted from paying the tax. The salesperson informed him, however, that upon his return to Saskatchewan, he could claim a rebate of the tax paid in Ontario.

Once in Saskatchewan, the moped was registered and licensed, and retail sales tax was paid to the Saskatchewan government. When the complainant's husband subsequently wrote to the Ministry of Revenue requesting a refund, he was informed that the Ministry required proof that the moped had been removed from Ontario within 30 days of its purchase. All available receipts were forwarded to the Ministry, although these showed that the moped was in Ontario on June 27, 1981, and had therefore not been removed within the 30 day limit.

The complainant felt that the Ministry had acted unreasonably in not refunding the tax, and requested that the Minister exercise his discretion under the Retail Sales Tax Act to exempt her husband from payment of the tax and provide a refund.

The Ombudsman notified the Deputy Minister of Revenue of his intention to conduct an investigation and subsequently received a statement of the Ministry's position. During the investigation, a review of the Retail Sales Tax Act confirmed that the tax was legally payable in Ontario, although a refund might be granted by the Minister upon receipt of satisfactory evidence that the item was removed from the province within 30 days of its purchase. It was also confirmed that the Act allows the Minister to exempt a purchaser if, owing to special circumstances, it is deemed inequitable that the whole amount of tax be paid.

In response to concern on the part of the Ministry, the complainant provided it with information indicating that a rebate could not be claimed from the Saskatchewan government and requested that the Minister exercise his discretion to provide the refund.

On April 27, 1982, the Office received a copy of a letter dated April 23, 1982, addressed to the complainant from the Deputy Minister, informing her that her request for a refund had been approved and that payment would be processed and forwarded within a few weeks. The complainant was pleased with this disposition of her complaint and our file was therefore closed on May 17, 1982.

DETAILED SUMMARY NO. 27

This complaint against the Ministry of Revenue was brought to the Ombudsman's attention by way of a letter dated April 7, 1981. The complainant felt that the Ministry had unreasonably refused to reimburse him for expenses which he incurred as a result of a clerical error by the Ministry which caused his property assessment to be nearly doubled.

On July 28, 1981, the Ombudsman notified the Deputy Minister of Revenue of our intention to investigate this complaint. In his statement of the Ministry's position, the Deputy Minister indicated that the increase in the complainant's assessment had been the result of an error in the Ministry's office. Since the assessment roll had been returned to the municipality, the only means available under the Assessment Act to correct the error was an appeal to the Assessment Review Court. The Deputy Minister indicated that the complainant had been advised to proceed in this manner and concluded that the factors resulting in the delay in reducing the assessment were beyond the control of the Ministry of Revenue.

The investigation showed that on January 7, 1980, the complainant's Notice of Assessment for taxation commencing January 1, 1980 was mailed to him by the Ministry. This notice showed the assessed value of his property to be substantially increased over the previous year's assessment. On contacting the Regional Assessment office on January 14, 1980, the complainant was informed that this had been the result of an error, but in order to have it corrected, he would have to complain to the Assessment Review Court. The complaint was received by the Court on January 15, 1980, but due to difficulties in the hearing schedule, the Court's decision reducing the assessment to \$7,850 was not issued until October 27, 1980. The assessment roll had, however, been returned to the municipality on January 22, 1980, and a tax bill based on the incorrect assessment had been issued.

Under the terms of the complainant's mortgage, the mortgagor was to pay the municipal taxes out of his mortgage account. When the tax bill based on the higher assessment was received, the account did not contain sufficient funds, and an overdraft resulted to which a \$26.68 interest charge was applied. Although a refund was provided by the municipality for the overpayment of taxes, the complainant felt that the Ministry should reimburse him \$30.35 to cover the interest charge, plus additional out-of-pocket expenses which he incurred as a result of the Ministry's error.

During the investigation, the Office learned that the time for returning the assessment roll to the municipality had been extended under the Assessment Act to January 22, 1980 and changes therefore could have been made to the roll between January 7, 1980 and January 22, 1980. It seemed, then, that the Ministry could have corrected the assessment at the time the complainant brought the error to its attention on January 14, 1980. It also seemed that the complainant had been given incorrect advice on that date, when he was told that a formal complaint to the Assessment Review Court was the only means of having the error corrected.

Based on the results of the investigation conducted, the Ombudsman tentatively concluded that the Ministry had acted unreasonably and formulated the tentative recommendation that the Ministry reimburse the complainant. In accordance with section 19(3) of the Ombudsman Act, the results of the investigation were communicated to the Deputy Minister, along with the possible conclusions and the possible recommendation, in a letter dated April 14, 1982. The Ministry was accorded the opportunity to make representations, and in his letter of May 17, 1982, the Deputy Minister explained that neither the Ministry of Revenue Act nor the Assessment Act contained any provisions allowing for a payment such as that requested by the complainant. Nevertheless, the Ministry remained receptive to any proposal that would permit it to reimburse the complainant. Subsequently, the Ombudsman's Office pursued with the Ministry other means by which a payment could be made, although these efforts were not successful.

On July 22, 1982, the Ombudsman issued his final report containing his final conclusions and final recommendation made pursuant to the Ombudsman Act. The report noted that the Ministry had acknowledged its error and showed itself receptive to making the payment. It found itself in a dilemma, however, in that on the one hand, it felt that the complainant ought perhaps to be paid, but on the other, had no means of legally disbursing such funds.

The Ombudsman noted in his report that this was not the first time that a difficulty of this nature had arisen. (See Appendix A, page 96.)

Since formulating his possible conclusions and possible recommendation, no information has been brought to the Ombudsman's attention to cause him to alter his opinion. While the amount of money which the Ombudsman felt was due to the complainant was not large, he continued to be of the view that the complainant should be reimbursed.

The Ombudsman's final conclusions under section 22 of the Ombudsman Act were: that the Ministry of Revenue had been wrong in erroneously increasing the complainant's assessment; that the Regional Assessment Office had been wrong in informing the complainant that it was necessary to make a formal complaint to the Assessment Review Court; that the Ministry had acted unreasonably in omitting to alter the assessment prior to the roll being returned to the municipality; and that the Ministry had acted unreasonably in omitting to reimburse the complainant.

The Ombudsman's final recommendation, pursuant to section 22 of the Act, was that the omission should be rectified and the Ministry of Revenue take appropriate steps to reimburse the complainant the sum of \$30.35.

In response to the Ombudsman's final report, the Deputy Minister of Revenue stated that he had written to the Deputy Treasurer and Deputy Minister of Economics, who is responsible for the administration of the Financial Administration Act, supporting the amendment proposed by the Select Committee on the Ombudsman. In addition, the Office contacted officials of the Ministry of Revenue's Legal Services Branch, who agreed to refer this case to the Ministry of the Attorney General for a legal opinion which might possibly provide the Ministry with the legal authority to reimburse the complainant.

While the Ombudsman remained convinced that the Ministry of Revenue ought to reimburse the complainant, he recognized the difficulty posed by its lack of legal authority to do so. The Ombudsman was, however, of the opinion that the actions taken by the Deputy Minister in writing to the Deputy Treasurer and Deputy Minister of Economics, and in requesting a legal opinion from the Ministry of the Attorney General, were appropriate and adequate, and he decided therefore not to send a copy of his report and recommendation to the Premier, as he is entitled to do under section 22(4) of the Ombudsman Act.

This file was therefore closed, although the Office will remain in touch with the Ministry of Revenue while it awaits the legal opinion from the Ministry of the Attorney General.

MINISTRY OF REVENUE

RECOMMENDATION DENIED

DETAILED SUMMARY NO. 28

The complainant contended that a decision of the Ministry of Revenue was unreasonable.

The complainant, a student, worked for the Ministry for five consecutive summers, the last three in the Tax Return Centre. In May, 1980, prior to commencing work for the fifth summer, the complainant signed the necessary employment contract accepting a position as a Clerk 1 at \$4.65 per hour. At this time he learned that two other students with similar educational backgrounds, but without previous Ministry experience, were earning more money than he. The complainant did not immediately raise the issue of his salary with officials of the Personnel Department, as he was of the view that it was neither the proper time nor place to do so; rather, he subsequently approached the Director of the Corporations Tax Branch and requested a reevaluation. In the complainant's view he was incorrectly classified as a Clerk 1, given that, in terms of skill, expertise, and responsibility, the work he was performing was beyond that required of a Clerk 1. No salary increase was granted.

The Ombudsman wrote to the Deputy Minister of Revenue to advise him of his intention to investigate this complaint. The Deputy Minister's response indicated that the complainant had received the highest rate of pay available for summer students within the Ministry, the only exception being the two students who were selected and employed directly by the Tax System Operations and Design Division on special projects. In summary, the Deputy Minister was of the view that the complainant was "not so exceptional as to merit remuneration higher than that paid to over two hundred other students".

In the course of the investigation, this Office spoke with the complainant's immediate supervisor, members of the Branch with whom he worked, legal counsel for the Ministry, and representatives of the Civil Service Commission.

It was determined that the complainant's duties were not identical to those of an Audit Trainee as outlined in the Ministry's job description; however, they were to a great extent similar to those of a full-time Tax Auditor at the Tax Return Centre. It was acknowledged that the complainant did not have the same responsibilities, nor did he have to achieve productivity levels expected of full-time staff.

The remuneration policy outlined in the Ontario Manual of Administration, which outlines the policy for the Ontario government concerning the employment of summer students, indicates that a student's wages are dependent upon the duties performed by that student. A memorandum dated February 6, 1980, from the Personnel Director of the Ministry of Revenue to Branch Directors and Regional Commissioners, based student wages on the level of educational attainment. In a letter from our Director of Investigations the Deputy Minister was asked to comment on the apparent inconsistency between the two programs. In addition, he was asked for a comparison of the complainant's duties with those of an Audit Trainee, and further, under what authority and for what reason one salary increment had been previously awarded to the complainant, whereas a second increment was denied in 1980.

The Deputy Minister replied with the following comments.

With respect to the apparent inconsistency between the Manual and the policy followed by the Ministry, he stated that the complainant's remuneration was fixed in accordance with the underfill provision of the Manual (section 15-10-3). This provision reads as follows:

Underfill - Where a student is not required to perform the full range of duties of the assigned position or is subject to different production standards from nonstudent labour performing the same work, the student may be paid at a rate below that of the minimum rate of pay for the equated classification which:

- shall correspond to a rate in the salary range established for a lower class in the equated series if such lower class exists; OR
- shall be at any rate deemed equitable by the Ministry commensurate with duties performed if no appropriate lower class exists.

The Deputy Minister went on to state in part:

This Ministry does not seek to hire a summer student to perform the full range of duties included in a classified position.... Were the Ministry to

hire students to perform the duties of regular staff within the constraints of its budget, it would be able to hire students only to perform the duties of staff in the lowest salary ranges whose duties are less gratifying and stimulating intellectually. By permitting students to perform under supervision part of the duties of a more challenging position, we both recognize the students' inability to handle the complete job and offer to as many students as possible a position of some responsibility which offers both useful experience and satisfaction.

He indicated that the complainant had been employed in the Tax Return Centre in response to his own request. No comment was made by the Deputy Minister with respect to the other two issues raised.

At this stage of the investigation, the Ombudsman formed the tentative conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Ministry's omission to compensate the complainant in accordance with the pay practice outlined in the Ontario Manual of Administration was "unreasonable" in that no consideration was given to the work performed by the complainant.

It also appeared to the Ombudsman that it might be open to him to tentatively recommend, in accordance with section 22(3)(d) of the Ombudsman Act, that the Ministry's practice of paying summer students on the basis of their educational achievement should be altered to conform with the pay policy as outlined in the Ontario Manual of Administration. Further, it appeared that it might be open to him to recommend, in accordance with sections 22(3)(b) and (g) of the Ombudsman Act, that the Ministry reexamine the amount of wages paid to the complainant, and pay him the salary which would have been due had a practice conforming with the Ontario Manual of Administration been followed.

The Ombudsman reported his tentative conclusion and recommendations to the Deputy Minister of Revenue as required by section 19(3) of the Ombudsman Act.

Representations received from the Deputy Minister of Revenue indicated that the Ministry was of the view that its program conformed to the policy in the Manual and that the Ombudsman's possible conclusion ignored the positive

correlation between educational background and complexity of work assignment. After carefully considering these representations, the Ombudsman noted that there had been no change in the summer student policy of either the Civil Service Commission or the Ministry of Revenue for the summer of 1982.

Contact with the Civil Service Commission revealed that the Commission's role is one of instructor rather than monitor. The only control it exerts is that each Ministry must advise it of the number of summer students employed annually, and the total cost of that employment. The Ombudsman was advised that there is continuing debate among the provincial Ministries concerning the amount of remuneration to be paid to summer students. Although the Commission was aware that some Ministries paid different rates of remuneration, it was not its intention that Ministries pay a flat fee for all jobs.

Before reaching his final conclusions on this complaint, the Ombudsman reviewed the job descriptions provided by the Ministry of Revenue, and compared those to the duties performed by the complainant. The Ombudsman agreed with the Deputy Minister that the complainant was in an "underfill" position, however, he remained of the view that the responsibilities assigned to the complainant were of greater complexity than those assigned to a Clerk 1. The Ombudsman was aware that the complainant's supervisor was directly responsible for his work, and that he did not have to achieve the same productivity levels as full-time staff.

With respect to the Deputy Minister's statement that he was surprised "that [the complainant] as a law student, does not have a greater regard for the contract into which he voluntarily entered", the Ombudsman pointed out that the complainant was unaware of the fact that some students were receiving more remuneration than himself until the day he signed his employment contract. He suggested to the Deputy Minister that as summer employment is not plentiful, an individual would hesitate to reject such employment at the end of May. Further, the Ombudsman noted that the complainant raised the issue with the appropriate authorities some two weeks after being hired.

With the above in mind, the Ombudsman decided not to alter his original tentative conclusion and recommendations. He therefore proceeded according to section 22(3) of the Ombudsman Act.

In addition, the Ombudsman recommended, pursuant to section 22(3)(g) of the Ombudsman Act, that the Civil Service Commission continue to monitor the use of its Manual.

The Deputy Minister of Revenue responded on October 1, 1982, rejecting the conclusion and recommendations for the reasons previously put forth by the Ministry.

The Chairman of the Civil Service Commission responded by letter dated August 18, 1982 indicating that he would draw the attention of all Deputy Ministers to the policies governing student remuneration outlined in the Manual of Administration.

A copy of the Ombudsman's report and recommendations was forwarded to the Premier. The Ombudsman reported the results of his investigation to the complainant and the file was closed.

MINISTRY OF
THE SOLICITOR GENERAL

DETAILED SUMMARY NO. 29

The complainant's lawyer contacted the Office of the Ombudsman by letter dated August 27, 1982 in order to outline her complaint against the Office of the Chief Coroner.

The complainant, an old age pensioner, was the common-law spouse of a man who had died in an automobile accident three months earlier. Under the deceased's automobile insurance policy, the complainant was entitled to death benefits as she and the deceased had cohabited for eight years. Because the insurance company required a Coroner's Report before paying these benefits, the complainant requested a report from the Coroner. However, he refused to provide this report to the complainant as she was not considered to be a spouse for purposes of the Coroner's Act. The deceased's family had refused to request the report on the complainant's behalf.

On October 4, 1982 the Deputy Solicitor General was notified of our intention to investigate this complaint. It was the complainant's contention that it was unreasonable of the Coroner not to recognize a spousal relationship as defined in the Insurance Act and in Part II of the Family Law Reform Act. She contended that she was the deceased's common-law spouse and that, as such, the Coroner should release his report to her, as provided in section 18(2) of the Coroner's Act.

By letter dated October 8, 1982 the Deputy Solicitor General responded to our letter outlining the rationale for the Chief Coroner's interpretation of the Coroner's Act. It was felt that confining the definition of next-of-kin and spouse and children to the case law provided a more consistent interpretation of the Act, although he acknowledged that the definition in the Insurance Act did provide a more liberal definition. He also indicated that he would be pleased to obtain a report for the Ombudsman on this matter and to permit him to personally review the file. The Deputy Chief Coroner subsequently advised the Ombudsman that the solicitor for the complainant had been provided with the required Coroner's Report. This was later confirmed by the complainant's solicitor who advised that he was very appreciative of the Office's efforts in this matter. Our file was subsequently closed as the complaint had been resolved to the complainant's satisfaction.

MINISTRY OF
TOURISM AND RECREATION

RECOMMENDATION DENIED

DETAILED SUMMARY NO. 30

This complaint was against the Advertising and Promotion Services Group of the Ministry of Tourism and Recreation.

The complainant believed that the Ministry unreasonably decided to remove his ethnic newspaper from the Government Information/Communication Advertising Program. The complainant also believed he should be compensated for advertisements which he would have received for publication in his paper during the time that it was removed from the Program.

The Government Information/Communication Program was introduced by the Ministry in 1975 to ensure that various ethnic and other communities in Ontario were kept advised of new Ontario government policies and programs by the placing of advertisements in ethnic newspapers. Guidelines were established to ensure equitable treatment of all ethnic publications in the program. This investigation focused on whether the guidelines had been uniformly applied to the complainant's publication as well as to similar ethnic newspapers in the program.

The investigator interviewed the complainant and various government officials, and obtained all relevant documents.

The Ministry stated that the complainant's publication was removed from the program because its advertising rates were not cost efficient. This is one of the Ministry's guideline criteria. The Ministry also said it believed that the complainant's publication was of a lower quality than other ethnic papers because it did not have an editorial policy, used several different typefaces and contained no original reporting.

The Ministry calculates the cost efficiency of a publication's advertising rate on a cost-per-thousand basis, applied to the newspaper's circulation rate. The complainant had submitted a sworn affidavit from his printer stating his paper had a circulation of 5,000. As the complainant charged 82¢ per line of advertising, his cost-per-thousand rate was \$90.02.

The investigation showed that two newspapers serving the same ethnic group had cheaper cost-per-thousand rates than that of the complainant. But it appeared that a third newspaper in the ethnic group had a higher cost-per-thousand rate than the complainant's publication.

The complainant claimed that his newspaper actually had a cheaper line rate than other papers in the program because the other papers had inflated their circulation figures. Evidence on this matter was taken under oath. The evidence revealed other papers were grossly inflating their circulation figures and thereby substantially reducing the publication's cost-per-thousand rate. Evidence received under oath from the printer of the complainant's paper confirmed the complainant's stated circulation figure of 5,000 papers.

The guidelines also require that a newspaper must offer satisfactory proof that the majority of its total circulation is in Ontario. Information acquired during the course of the investigation revealed that eight publications receiving government information advertising circulated less than 50% of their papers in this province. The complainant circulates 100% of his papers in Ontario.

The Ministry's guidelines do not address standards relating to editorial policy, typeface or original reporting. Notwithstanding this fact, these factors were part of the basis for the Ministry's decision to remove the complainant's publication from the program. The investigation also reviewed several other publications receiving advertising through the program. These publications used several different typefaces within each edition and appeared to have no original reporting.

Having considered this information, the Ombudsman formed the view that it was open to him to conclude that the Ministry's decision to remove the complainant's publication from the Government Information/Communication Program was unreasonable, unjust and oppressive. It appeared that the cost efficiency of the complainant's publication was better than that of one other publication in the program serving the ethnic community involved. The investigation also indicated the sworn circulation statements provided by publishers were an inaccurate basis for calculating cost efficiency. It appeared that criteria not contained in the guidelines had been unreasonably applied to the complainant's publication, while other similar publications continued to receive advertising through the program.

Further, the Ombudsman formed the view that the Ministry had applied its guidelines for inclusion in the program in an unreasonable, unjust, and oppressive manner. Specifically, the criteria of cost efficiency, percentage of Ontario circulation and the number of pages required

for publications receiving advertisements through the program, had not been uniformly applied.

Having made these tentative conclusions, the Ombudsman also formed the view that it was open to him to recommend that the Ministry's decision to remove the complainant's paper from the program ought to be cancelled and the publication reinstated. He further recommended that the Ministry verify circulation figures for publications then receiving advertising under the program. Finally, he tentatively recommended that the Minister review the administration of the guidelines to ensure equitable treatment for all publications which were eligible for Ontario government information advertising.

Since the Ombudsman believed that the Ministry might be "adversely affected" by his possible conclusions and recommendations, he afforded it the opportunity to make representations respecting the possible adverse report. Representations were received on behalf of the Ministry during a personal meeting with the Executive Coordinator of the Advertising and Promotion Services Group of the Ministry.

In response to the Ombudsman's first tentative conclusion, the Executive Coordinator of the program advised that the complainant had submitted contradictory circulation information in conjunction with his applications for government advertising in the past. The Executive Coordinator advised that the Ministry had never taken steps to validate the number of papers printed by the publications inasmuch as such action might be perceived to be discriminatory in nature. It was also pointed out that sworn statements of circulation are a commonly accepted standard within the advertising industry.

The Executive Coordinator of the Advertising Program noted that the Ministry did exercise some discretion in applying the program guidelines. In response to the Ombudsman's observation that eight publications were receiving government advertising and circulating less than 50% of their papers in the province, he noted that four of the papers had recently been removed from the program. The remaining four publications had been retained in the program because it was felt that with support, the papers would soon achieve a 50% Ontario circulation. Further exceptions were apparently made by the Ministry where a publication fell below the guideline requirements, but was thought to be well received in the community it purported to serve.

In response to the Ombudsman's finding that the third newspaper in the ethnic group had a higher cost-per-thousand rate than that offered by the complainant, the Executive Coordinator of the program advised that the figures cited in documentation made available to the investigator had been incorrect. These figures had since been adjusted and indicated that the paper in question offered a more reasonable cost-per-thousand rate than the complainant's publication.

On December 1, 1982, the Ombudsman received a letter from the Executive Coordinator of the Advertising and Promotion Services Group indicating that the Ministry was prepared to amend the program guidelines. The letter also stated that the Ministry would reinstate the complainant's publication in the program, provided the complainant was prepared to meet certain terms and conditions of reinstatement. He proposed to circulate a revised version of Guideline #6 (concerning proof of circulation) which would state:

Guideline #6:

- a) On a publication's original application for advertising consideration, a notarized, sworn statement of circulation is required for circulation/cost analysis. This requirement is based on compliance with advertising industry practice which requires this formal statement for a publication's listing in Canadian Advertising Rates and Data (CARD).
- b) In addition, publications receiving "Ontario 20" advertisements may be required to submit, from time to time, a copy of a current printer's invoice showing the number of papers printed.

The Ministry was prepared to reinstate the complainant's publication on the condition that he agreed to adopt the provincial 5% inflation restraint formula in relation to his annual line rate increase.

On consideration of this material, the Ombudsman was of the opinion that the Ministry ought to take a firmer position in requiring the submission of printer's invoices to validate circulation figures on an annual or more

frequent basis. He also considered that it was necessary to establish whether the Ministry's 5% restraint formula would be applied to all publishers receiving advertising through the program. The Ombudsman's opinions were discussed with representatives of the Ministry. The Ministry claimed that a periodic and regular request for printers' invoices would create a great deal of administrative pressure. The Ministry also stated that it might be forced to withdraw its proposal of allowing the complainant a 5% line rate increase. The Ministry believed that a 5% increase limit would have the effect of automatically raising all publications' line rates by 5%.

After considering the results of this investigation and the Ministry's further representations, the Ombudsman came to a further possible conclusion. If the complainant had been unreasonably, unjustly and oppressively removed from the advertising program, then in fairness, there ought to be some degree of monetary compensation made to him by the Ministry.

The Ombudsman believed that the complainant should receive compensation for the advertisements he did not receive from the date the Ministry was aware of his offer to continue publishing advertising from the Ministry at his old line rate of 72¢ per line. (Since the complainant did not publish the advertisements, he incurred no publishing cost.) As such, compensation should reflect the number of advertisements the complainant would have received under the program at a line rate of 72¢, less a percentage for the cost of printing the advertisements.

Subsequently, the Ministry informed the Ombudsman it would not implement this possible recommendation.

The Ombudsman finally concluded that the Ministry's decision to remove the complainant's publication from the Government Information/Communication Program had been unreasonable, unjust and oppressive, and that the Ministry had applied its guidelines to the complainant in an unreasonable, unjust and oppressive manner. He recommended in his report to the Ministry that the decision to remove the complainant's publication from the program be cancelled and the publication be reinstated at a line rate to be negotiated between the Ministry and the complainant.

The Ombudsman further recommended that the Ministry verify circulation figures for publications currently receiving advertising under the program by obtaining printers' invoices from all publishers, and continuing to do so annually. The Ombudsman also recommended that the

Ministry review the administration of the guidelines to ensure equitable treatment for all publications which were eligible for Ontario government information advertising, and that the Ministry pay to the complainant compensation reflecting the amount of money he would have received for advertising under the program from March 16, 1982. The Ombudsman recommended that compensation should be calculated at a line rate of 72¢, less the recognized industry cost for printing advertisements issued through the program. In the absence of an industry-recognized cost, the Ombudsman recommended that the Ministry calculate the compensation payable to the complainant and provide him with its estimated printing cost factor, and the reasons it believed this factor to be fair.

The Ombudsman's final report was sent to the Ministry on February 9, 1983. On February 23, 1983, the Deputy Minister of the Ministry of Tourism and Recreation responded, requesting that the Ombudsman advise him of the identity of the publications which had been inflating their circulation figures. In rejecting this request, the Ombudsman advised the Deputy Minister that it would be unfair to single out the publications in question. It was his opinion that it was the responsibility of the Ministry to review all papers in the program to ensure honesty.

Inasmuch as the Ministry had taken no other action in response to his report which was considered to be adequate and appropriate, the Ombudsman forwarded a copy of his report to the Premier on March 3, 1983.

By letter dated March 8, 1983, the Deputy Minister of the Ministry of Tourism and Recreation wrote to advise that the complainant's paper would be reinstated in the program and that the Ministry was prepared to negotiate with the complainant a reasonable line rate. The Ministry stated that it would continue its practice of verifying circulation figures by obtaining signed questionnaires and/or printers' invoices for each publication in the program. The Ministry advised that this action would be taken annually. In order to ensure cost efficiency and equitable treatment in its administration of the program, the Deputy Minister advised that the Ministry would continue to conduct periodic reviews of all publications receiving advertising through the program.

Finally, in response to the recommendation that the Ministry compensate the complainant, the Ministry stated that it was not prepared to do so for the period of the investigation during which the complainant had chosen, unconditionally, not to accept the Ontario government's

ethnic advertisements at a 72¢ line rate. The Deputy Minister advised that the governing principle for advertising is that the media are paid for a service rendered. The Ministry noted that when no advertisements are published, there can be no obligation after the fact which would require the advertiser to pay public funds to the publisher. The Ministry was of the opinion that if it were to establish such a precedent, the government's program manager's responsibility to administer public funds in the most cost-efficient way would be in jeopardy.

As only one of his four recommendations had been fully implemented by March 31, 1982, the Ombudsman sent a copy of the Deputy Minister's letter to the Premier.

On June 15, 1983 (after the 1982/83 fiscal year end), the Deputy Minister forwarded a clarification of his March 8, 1983 response to the Ombudsman. This letter indicated that the Ministry had reinstated the ethnic newspaper on the Government Information/Communication Program for ethnic publications at a mutually agreeable line rate; the Ministry's agency will verify circulation figures by obtaining printers' invoices and/or signed questionnaires; the Ministry has procedures in place to review the administration of the guidelines and these ongoing procedures will ensure equitable treatment for all eligible publications.

However, the Deputy Minister was not prepared to alter his position regarding compensation to the complainant.

The Ministry has therefore implemented three of my recommendations and has declined to implement one recommendation.

MINISTRY OF
TRANSPORTATION AND COMMUNICATIONS

DETAILED SUMMARY NO. 31

This complainant telephoned our Office on August 26, 1982 concerning a decision rendered by the Ministry of Transportation and Communications. The complainant contended that the Ministry had acted unreasonably in suspending his driver's licence.

The complainant explained that he had received a driver's licence suspension notice from the Ministry which had apparently been the result of a Criminal Code conviction for "drinking and driving" in Manitoba. The complainant alleged that he had not been involved in this offence and therefore, the suspension was a mistake. As a result of this suspension, the complainant was seriously inconvenienced in that he had to be driven to work every day. He was also frustrated in his efforts to solve the problem through telephone contacts with the Ministry of Transportation and Communications and the Manitoba authority.

Our investigator contacted an official of the Ministry of Transportation and Communications, who indicated that the suspension notice, authorized by the Ministry, was justified by information sent to the Ministry from the Manitoba Provincial Court. The official indicated that if this information was in error, the Ministry would issue a cancellation order for the complainant's suspension notice and he would be issued with a new driver's licence immediately. However, any indication of an error in the information from the Manitoba authority would have to be provided by that authority.

Our investigator contacted the police in Manitoba and learned that a man using the complainant's name had been arrested and charged in that city for "public mischief". As well, it was learned that he was responsible for the offence which caused the suspension of the complainant's driver's licence. Subsequent to this, our Office contacted the Manitoba Crown Attorney's office and an official there agreed to pass this information on to the Ontario Ministry of Transportation and Communications as soon as possible. As a result, the required information, which indicated that the complainant had been wrongfully convicted, was telexed to the Ministry on September 2, 1982. The complainant advised our Office that he had been notified on the same day that his driving privileges had been reinstated immediately.

As the complaint was resolved to the satisfaction of the complainant, the Ombudsman terminated his investigation and the file on the matter was closed on September 3, 1982.

DETAILED SUMMARY NO. 32

The complainants contacted the Office of the Ombudsman on October 20, 1981. They complained that the Ministry of Transportation and Communications had replaced a bridge on a creek (the outlet stream for the lake on which their cottage is located) with a half-culvert which was, they alleged, inadequate for the flow of water from the lake. In their opinion, the new culvert caused high water levels on the lake for extended periods of time.

On November 10, 1981, the Ombudsman notified the Deputy Minister of the Ministry of Transportation and Communications of his intention to investigate this complaint and requested a statement of the Ministry's position. The Deputy Minister replied that the new culvert was hydrologically adequate and that it should not hamper natural drainage in the area.

During the course of the investigation, the investigator assigned to this complaint reviewed the contents of the Ministry's files with various representatives of the Ministry, including a District Engineer, Municipal Engineer and a Senior Municipal Foreman. A professor of the University of Toronto was consulted. Other cottage owners on the lake were contacted as well as a water level control supervisor of the Ministry of Natural Resources. An on-site inspection was made with the Ministry's representative who had done the original hydrological study to determine the size of the culvert required for the new bridge.

It was learned that a preliminary hydrology study in the area of the bridge was done by the Ministry in 1979. Using design criteria for a one-in-ten-year storm, the Ministry determined that a 15 or 16 foot steel arch culvert on concrete footings could be used to allow drainage of the creek. Based on this study, a new bridge was constructed in the fall of 1980.

Following the installation of the new bridge, the complainants advised this Office that they experienced unusually high levels of water on their lake which flooded shorelines and caused damage to docks and boathouses. While they had experienced high water levels in the past,

they noted that since construction of the new bridge, lake water levels were higher and, more importantly in their opinion, they remained high for very long periods of time. Their position was supported by other property owners on the lake, who also believed that the natural drainage of the lake had been affected by the new culvert.

The Ministry representative who had done the preliminary hydrological study advised this Office that as the road on which the bridge is located is a cottage road, serving relatively few people, he applied the lowest hydraulic design criteria for the culvert. This was in accordance with Ministry policy. The one-in-ten-year storm design criteria meant that the culvert was sized to accommodate the worst possible storm expected in an average ten-year period, based on past experience.

The representative explained that since large, expensive bridges cannot be installed at every river crossing, and since every culvert will restrict water flow to some extent, the Ministry will install a culvert large enough to keep the rise of the high water mark of a water body within one foot of the previous high water mark.

Having reviewed the preliminary hydrological study which he had done in 1979, the Ministry representative found that the design of the culvert would cause the lake level to rise 1.4 feet above the old high water mark after a one-in-ten-year storm. This was slightly in excess of the allowable criteria. In view of the complaint with this Office and the possibility of error in design, the Ministry representative agreed to review the matter further.

On October 1, 1982, the Ministry representative advised the complainant that he had recommended that the culvert inlet be shaped to accommodate greater inflow into the culvert. He had also recommended that water levels be monitored through the fall and following spring and summer.

On October 5, 1982, the Ministry advised this Office that work was underway to modify the culvert inlet.

Under the circumstances, the complainant agreed no further investigation by this Office was necessary. The Ombudsman terminated his investigation and the file was closed on October 25, 1982.

APPENDICES

APPENDIX A
RECOMMENDATIONS DENIED

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|--|-------------------------|--|---|--|---|
| <u>MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS</u> | | | | | |
| <u>Liquor Control Board of Ontario</u> | | | | | |
| 9 | 4 | That the Board allow the complainant to sell liquor at his store under the authority of an agency licence to bona fide tourists, the outlet to be operated during appropriate hours when the local liquor store is closed. | | The Committee has not yet reported. | |
| <u>MINISTRY OF GOVERNMENT SERVICES</u> | | | | | |
| 2 | 60 | That the Ministry pay the complainant the sum of \$1,318.00 for his losses and legal expenses. | 3, Recommendation 34 | That the Audit Act and the Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of the Ombudsman Act have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further, that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Select Committee. | The Ministry of Treasury and Economics has responded and proposed that the Ombudsman Act is the more appropriate statute for the amendment, since the purpose of the amendment directly relates to procedure under that Act. The Ministry proposed that the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that the governmental organization pay a specified sum to or for the benefit of the complainant to |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|-----------------------|---|-----------------------------|----------------|
|---------------------------|-------------------------|-----------------------|---|-----------------------------|----------------|

MINISTRY OF GOVERNMENT
SERVICES

(cont'd)

reimburse the complainant for an ascertainable financial loss suffered by him in the matter complained of, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this section, for the payment of the sum so agreed on, such sum may, where it is less than \$1,000, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is \$1,000 or more, it may be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned."

MINISTRY OF HEALTH

| | | | | | |
|---|----|---|-------------------------|--|--|
| 4 | 45 | That the Ministry consider what changes should be made to the <u>Public Hospitals</u> | 5, Recommendation 27 | That the Ministry implement as soon as possible the recommendation of the Ombudsman. | On November 5, 1982, the Ministry advised the Committee of a draft of a proposed |
|---|----|---|-------------------------|--|--|

CONSIDERED IN
SELECT COMMITTEE
REPORT NO.

OMBUDSMAN'S
REPORT NO.

DETAILED
SUMMARY NO.

RECOMMENDATION OF COMMITTEE

PRESENT STATUS

MINISTRY OF HEALTH
(cont'd)

Act, Sec. 47 in order to give effect to the principle of a more widely distributed membership on the Hospital Appeal Board. That the Ministry inquire into the provisions of the Public Hospitals Act with a view to preventing acts flowing from Sections 44 to 50 of that Act which may be improperly discriminatory. It was further suggested that this inquiry be assigned to an organization such as the Ontario Council of Health.

6,
Recommendation 1

That the Ministry consider what changes should be made to the Public Hospitals Act and in Sec. 47 in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board. Further, the Ministry cause an inquiry to be made into the provisions of the Public Hospitals Act to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory.

amendment to Regulation 865 under the Public Hospitals Act, respecting criteria applicable to applications for appointment to a hospital medical staff. It is anticipated that this draft, which satisfies the Ombudsman's recommendation, will be adopted by the end of 1983.

8

The Committee reminded the Minister of Health "that to the extent that the Council of Health identifies appropriate legislative change and so recommends to the Minister the Committee will view these legislative changes as necessary to fully comply with the recommendations in its Sixth Report".

Ontario Health Insurance Plan

6

21

(2 complaints) that the regulations made pursuant to the Health Insurance Act be amended to provide that those subscribers who obtain the prior approval of the General Manager of the Plan have their medical fees, incurred for insured services performed outside the

7

The Committee supported the substance of the Ombudsman's recommendation and recommended to the Legislature for approval and adoption that the Ministry of Health cause an amendment to be made to the Health Insurance Act providing that "where the amount payable by the Plan for an insured service rendered by a physician is not prescribed by the regulations, it is

As of Jan. 1, 1980, Code R990 was added to the OHIP Schedule of Benefits (Schedule 15 of Regulation 452, R.R.O. 1980). It specifies that: "Independent consideration also will be given to claims for other unusual but generally accepted surgical procedures

OMBUDSMAN'S
REPORT NO.

DETAILED
SUMMARY NO. RECOMMENDATION DENIED

CONSIDERED IN
SELECT COMMITTEE
REPORT NO.

PRESENT STATUS

RECOMMENDATION OF COMMITTEE

MINISTRY OF HEALTH
(cont'd)

Province of Ontario, paid by the Plan to an extent substantially greater than would otherwise be paid for an analogous service listed in the O.M.A. fee schedule.

the function of the General Manager and he has the power to determine the amount".

8,
Recommendation 1

which are not listed specifically in the Schedule (excluding non-major variations of listed procedures).

That the Ministry give prompt notice to all persons whose claims for benefits under R990 are in the future refused, full particulars of the appeal procedures available to them at the same time as the notice of refusal is communicated.

9,
Recommendation 1

That all decisions made by OHIP in respect of any claim made for benefits pursuant to Code R990 (now R991) be subject to the appeal procedures set out in the General Manager's directive dated May 21st, 1981 and the Memorandum of the Director of the Professional Services Branch dated August 13, 1981.

OHIP advises claimants of their right of appeal to the Health Services Board only in those cases where the claimant expresses dissatisfaction with the amount of reimbursement for an out-of-country claim or where the issue of the non-availability of a procedure in Canada is apparent at the time a claim is initiated. OHIP is no longer taking the position that listing of a procedure in the Schedule of Benefits precludes a claimant's right of appeal.

9

That the Ministry of Health pay that portion of the complainant's claim which would have been an insured benefit had the operation been performed by a plastic surgeon.

The Committee has not yet reported.

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---------------------------------------|-------------------------|---|---|-------------------------------------|---|
| <u>MINISTRY OF HEALTH</u> (cont'd) | | | | | |
| 9 | 10 | That s. 43 of Regulation 323/72 of the <u>Health Insurance Act</u> be amended to permit the General Manager to determine the amount of payment for exceptional cases where medical procedures are performed by persons in possession of the necessary hospital privileges who are not physicians. | | The Committee has not yet reported. | |
| 9 | 11 | That the Board alter its practice of interpreting the regulation in this manner and acknowledge that the complainant had satisfied the requirement of the | | The Committee has not yet reported. | The Board has altered its practice, but did not acknowledge that the complainant had satisfied the requirement of the regulation. |

Board of Directors of Chiropractic

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|--|-------------------------|---|---|--|---|
| <div data-bbox="372 1238 414 1453"> <u>MINISTRY OF HEALTH</u> (cont'd) </div> <div data-bbox="444 1183 534 1498"> regulation and is, therefore, eligible to write the Ontario Chiropractic Licensing Examination. </div> | | | | | |
| 7 | 17 | <div data-bbox="585 1238 604 1463"> <u>MINISTRY OF HOUSING</u> </div> | | | |
| | | | 8, Recommendation 3 | <p>That the Ontario Housing Corporation immediately conduct a review and study of its manuals and the decision-making functions of Housing Authorities in particular for the purpose of amending its manuals to give Housing Authorities more guidance in order that the Rules of Administrative Fairness will be more strictly adhered to.</p> | <p>The Ontario Housing Corporation has instituted an internal review mechanism allowing applicants and tenants to seek reviews of decisions made by Local Housing Authorities. They are informed of the reasons for the decision and may appeal it to the members of the Housing Authority.</p> |
| | | | 9 | <p>The Corporation has rewritten portions of the Manual, and hopes to have chapters 1 to 10, which deal with tenant management, available for consideration by June, 1983. The Committee deferred further comment and consideration of the Corporation's response to the recommendation until it has received and reviewed the field manuals as amended.</p> | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|------------------------------------|-------------------------|--|---|---|----------------|
| <u>MINISTRY OF LABOUR</u> | | | | | |
| <u>Workers' Compensation Board</u> | | | | | |
| 6 | 38 | That the Appeal Board should reconsider its December 15, 1971 decision in the light of (this) report with a view to granting (the worker) entitlement to a permanent disability award for his disability diagnosed as post-traumatic neurosis. Any award should be made retro-active to June 4, 1971 when (the worker's) temporary benefits were terminated. | 7 | <p>The W.C.B. reconsider, by hearing, its decision of December 15, 1971. In that hearing the Board should at least hear fresh evidence respecting the relationship between the complainant's symptoms and the compensable accident both from the Medical Referee appointed in 1971 and the psychiatrist retained by the Ombudsman during the course of his investigation.</p> <p>On October 24, 1979, the Board rendered a decision directing that the additional medical report, the detailed summary and the recommendation of the Select Committee be referred to the Medical Referee for his further opinion and report. The Medical Referee was to examine the complainant if, in his opinion, such an examination was required.</p> <p>After receiving the Medical Referee's report, the Board reconvened and determined that the policy of benefit of doubt was not appropriate in this case. The Appeal was denied.</p> <p>The Committee in its Eighth Report noted its "grave reservations that the Appeal Board Panel in this matter considered the application of the policy of the benefit of the doubt as intended by the Committee and articulated by the Corporate Board policy itself". After discussing these issues fully</p> | |
| | | | 8 | | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---|-------------------------|-----------------------|---|-----------------------------|----------------|
| <div data-bbox="340 1225 360 1437">MINISTRY OF LABOUR</div> <div data-bbox="386 1168 430 1483"> <u>Workers' Compensation Board</u> (cont'd) </div> | | | | | |
| | | | | | |
| | | | | | |

with the Board, the Committee intends to report to the Legislature with any appropriate recommendations.

This case was again discussed during the Committee's hearings in September, 1981.

It was agreed that the Ombudsman and the Board would make submissions on the applicability of the policy of benefit of doubt.

The Committee has not yet reported on the further submissions.

The Committee has not yet reported.

9 19 That the Workers' Compensation Board alter its policy on attendance allowances and take into account reasonable costs.

That the Board revoke its decision and award the complainant an attendance allowance to cover reasonable costs of providing supervision and assistance which his condition necessitates.

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|-----------------------|---|-----------------------------|----------------|
|---------------------------|-------------------------|-----------------------|---|-----------------------------|----------------|

MINISTRY OF LABOUR

Workers' Compensation Board
(cont'd)

The Committee has not yet reported.

9 20 That the Board should cancel its decision and reconsider exercising the discretion provided by section 42 [now 43] of the Workers' Compensation Act.

The Committee has not yet reported.

9 21 That the Board revoke its decision and grant the complainant the full assessed value of his permanent partial disability award.

The Committee has not yet reported.

9 22 That the Appeal Board reconsider its previous decision with a view to granting the complainant a temporary supplemental to his permanent partial disability, on the basis of a full consideration of the appropriate test for entitlement to such benefit.

That the Board provide reasons for its decision following the reconsideration.

APPENDIX B
RECOMMENDATIONS UNDER
SECTION 22(3)(d) or (e)

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3), (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|------------------------------------|-------------------------|--|---------------------|---|--------------------------------------|--|--|
| MINISTRY OF EDUCATION | | | | | | | |
| 2 | 47 | That a more comprehensive insurance policy be made available to students, one which would provide compensation for injuries resulting in the loss of future earning power. | May 4, 1977 | Deputy Minister took steps to meet with insurance industry representatives regarding more comprehensive insurance for students. | 3, Recommendation 23 | That the Ministry forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type of a realistic premium which would adequately compensate a pupil for injuries sustained in the case of a pure accident as the result of participation in shop classes and in organized athletic activities. | The Ministry has amended s. 8(1)(i) of the <u>Education Act</u> as follows: "The Minister may (i) prescribe the conditions under which and the terms upon which pupils of boards shall be deemed to be employees under the <u>Work-ers' Compensation Act</u> , deem pupils to be employees for such purpose and require a board to reimburse Ontario for payments made by Ontario under that Act in respect of a pupil of the board deemed to be an employee of Ontario by the Minister." |
| MINISTRY OF GOVERNMENT SERVICES | | | | | | | |
| 2 | 57 | That the Public Service Superannuation Act be amended in order to eliminate all restrictions | Aug. 31, 1976 | Executive Secretary of the Civil Service Commission agreed to | 3, Recommendation 24 | That the Ministry table appropriate legislation in the Legislature during the current session removing the | Amendment to s. 16 of the <u>Public Service Superannuation Act</u> is currently being prepared by the Benefits |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------------------|-------------------------|--|---------------------|--|--|---|--|
| <u>MINISTRY OF HEALTH</u> (cont'd) | | | | | | | |
| | | to the granting of an unconditional licence. | | | Area Planning Coordinators responded on behalf of the Ministry as to the additional steps which have been taken subsequent to the letter from the Minister to the Ombudsman dated May 4, 1977. The Committee has attached the said response to this report under Part IX as Schedule D. The Committee is of the opinion that the Ministry has and will continue to fully comply with the recommendations of the Ombudsman. | | |
| 4 | 45 | That the Ministry consider what changes should be made to the Public Hospitals Act, Section 47 in order to give effect to the principle of a more widely distributed | Jan. 1978 | The Deputy Minister took the position that decisions of hospital boards and the Hospital Appeal Board in general | 5, Recommendation 27 | That the Ministry of Health implement as soon possible the recommendation of the Ombudsman. | On November 5, 1982 the Ministry advised the Committee of a proposed amendment to Regulation 865 under the <u>Public Hospitals Act</u> respecting criteria applicable to |
| | | | | | 6, Recommendation 1 | That the Ministry of Health consider what changes should be made | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|--|---------------------|--|--------------------------------------|--|--|
| | | <u>MINISTRY OF HEALTH</u> (cont'd) | | do not fall within the jurisdiction of the Ombudsman and for that reason the Ministry could only accept the Ombudsman's comments and recommendations as informal observations and suggestions. | | to the <u>Public Hospitals Act</u> and Section 47 in particular, including changes in the quorum provisions and length of membership respecting the <u>Hospital Appeal Board</u> . Further, the Ministry of Health cause an inquiry to be made into the provisions of the <u>Public Hospitals Act</u> to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory. | applications for appointment to a hospital staff. It is anticipated that this draft, which satisfies the Ombudsman's recommendation, will be adopted by the end of 1983. |
| | | membership on the Hospital Appeal Board. That the Ministry enquire into the provisions of the <u>Public Hospitals Act</u> with a view to preventing acts flowing from Sections 44 and 50 of that Act, which may be improperly discriminatory. It was further suggested that this inquiry be assigned to an organization such as the Ontario Council of Health. | | | | The Committee reminded the Minister of Health that to the extent that the Council of Health identifies appropriate legislative change and so recommends to the Minister, the Committee will view those legislative changes as necessary to fully comply with the recommendations in its Sixth Report". | |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION UNDER SECTION 22(3) (d) or (e) | DATE OF RESPONSE | NATURE OF RESPONSE | CONSIDERED IN SELECT COMMITTEE | RECOMMENDATION OF THE COMMITTEE | PRESENT STATUS |
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|------------------------------------|----------------|
|---------------------------|-------------------------|---|---------------------|-----------------------|--------------------------------------|------------------------------------|----------------|

MINISTRY OF
LABOUR

Workers' Compensation Board

| | | | | | | | |
|---|-----|--|--|--|----------------------------|--|--|
| 2 | 132 | That the Board either request jurisdictional determination from the courts or request that the Workers' Compensation Act be amended to give the Board the power to both collect and offset overpayments. | | | 3, Recommendation 31 | Amend the Workers' Compensation Act to provide for statutory authority to recover or write-off overpayments. | Recommended amendment has yet to be enacted. |
|---|-----|--|--|--|----------------------------|--|--|

APPENDIX C
STATISTICAL TABLES

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

GOVERNMENT OF ONTARIO

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|------------------------|-------------------------|---|-------|
| | | | | |
| Agriculture and Food | 15 | 8 | 9 | 32 |
| Crop Insurance Commission of Ontario | 1 | | | 1 |
| Farm Products Appeal Tribunal | 1 | | | 1 |
| Ontario Crop Insurance Arbitration Board | 1 | | | 1 |
| Ontario Drainage Referee | | 1 | | 1 |
| Ontario Drainage Tribunal | 3 | | | 3 |
| Ontario Egg Producers' Marketing Board | 1 | | | 1 |
| Ontario Milk Marketing Board | 1 | 1 | | 2 |
| Attorney General | 36 | 38 | 21 | 95 |
| Assessment Review Court | 1 | 3 | 1 | 5 |
| Criminal Injuries Compensation Board | 8 | 2 | 5 | 15 |
| Ontario Municipal Board | 26 | 21 | 10 | 57 |
| Public Trustee | 15 | 2 | 4 | 21 |
| Colleges and Universities | 69 | 25 | 13 | 107 |
| Colleges of Applied Arts and Technology | 12 | 2 | | 14 |
| Ontario Council of Regents for Colleges of Applied Arts and Technology | 7 | | | 7 |
| Community and Social Services | 135 | 98 | 54 | 287 |
| Centres for Developmentally Handicapped | 2 | | | 2 |
| Training Schools | 22 | 3 | 3 | 28 |
| Total | 159 | 101 | 57 | 317 |
| Social Assistance Review Board | 58 | 11 | 6 | 75 |

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| <u>Ministries/Agencies</u> | <u>WITHIN JURISDICTION</u> | <u>OUTSIDE JURISDICTION</u> | <u>INFORMATION REQUESTS/ SUBMISSIONS</u> | <u>TOTAL</u> |
|---|--------------------------------|---------------------------------|--|--------------|
| Consumer and Commercial Relations | 133 | 30 | 54 | 217 |
| Commercial Registration Appeal Tribunal | 1 | 1 | | 2 |
| Liquor Control Board | 15 | 2 | 4 | 21 |
| Liquor Licence Board | 2 | 5 | 1 | 8 |
| Ontario Racing Commission | 1 | 1 | | 2 |
| Ontario Securities Commission | 11 | 1 | 1 | 13 |
| Pension Commission of Ontario | 2 | | | 2 |
| Residential Tenancy Commission | 21 | 17 | 12 | 50 |
| Residential Premises Rent Review Board | 8 | 3 | 3 | 14 |
| Correctional Services | 28 | 9 | 18 | 55 |
| Correctional Centres | 560 | 62 | 197 | 819 |
| Detention Centres | 768 | 46 | 308 | 1122 |
| Jails | 645 | 25 | 166 | 836 |
| Total | <u>2001</u> | <u>142</u> | <u>689</u> | <u>2832</u> |
| Ontario Board of Parole | 29 | 15 | 8 | 52 |
| Citizenship and Culture | 4 | | 3 | 7 |
| Ontario Lottery Corporation | 1 | | | 1 |
| Royal Ontario Museum Board of Trustees | 1 | | | 1 |
| Education | 46 | 20 | 11 | 77 |
| Education Relations Commission | 1 | | | 1 |
| Teacher's Superannuation Commission | 6 | | 2 | 8 |

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111
1
1

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| <u>Ministries/Agencies</u> | <u>WITHIN JURISDICTION</u> | <u>OUTSIDE JURISDICTION</u> | <u>INFORMATION REQUESTS/ SUBMISSIONS</u> | <u>TOTAL</u> |
|---|--------------------------------|---------------------------------|--|--------------|
| Energy | 5 | 2 | 2 | 9 |
| Ontario Energy Board | 1 | | | 1 |
| Ontario Hydro | 24 | 16 | 5 | 45 |
| Environment | 67 | 9 | 13 | 89 |
| Government Services | 33 | 10 | 12 | 55 |
| Public Service Superannuation Board | 4 | | | 4 |
| Health | 35 | 7 | 21 | 63 |
| Psychiatric Hospitals | 134 | 18 | 44 | 196 |
| O.H.I.P. | 35 | 22 | 18 | 75 |
| Total | <u>204</u> | <u>47</u> | <u>83</u> | <u>334</u> |
| Advisory Review Board | 6 | | 1 | 7 |
| Alcoholism and Drug Addiction Research Foundation | 4 | | | 4 |
| Board of Regents of Chiroprody | 1 | | | 1 |
| Clarke Institute of Psychiatry | | 2 | | 2 |
| Health Disciplines Board | 18 | 5 | 5 | 28 |
| Health Services Appeal Board | | 1 | | 1 |
| Review Board for Psychiatric Facilities | 6 | | | 6 |
| Toronto East General and Orthopaedic Hospital Board of Governors | 1 | | | 1 |
| Industry and Trade Development | 10 | 2 | 8 | 20 |
| Ontario Small Business Development Corporation | 1 | | | 1 |
| Intergovernmental Affairs | 3 | | 1 | 4 |

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| <u>Ministries/Agencies</u> | <u>WITHIN JURISDICTION</u> | <u>OUTSIDE JURISDICTION</u> | <u>INFORMATION REQUESTS/ SUBMISSIONS</u> | <u>TOTAL</u> |
|--|--------------------------------|---------------------------------|--|--------------|
| Labour | 69 | 18 | 19 | 106 |
| Employment Standards - Panel of Referees | | | 1 | 1 |
| Ontario Human Rights Commission | 39 | 8 | 12 | 59 |
| Ontario Labour Relations Board | 16 | 2 | 3 | 21 |
| Workers' Compensation Board | 627 | 614 | 132 | 1373 |
| Municipal Affairs and Housing | 143 | 25 | 25 | 193 |
| Local Housing Authorities | 2 | | | 2 |
| Ontario Housing Corporation | 53 | 23 | 18 | 94 |
| Ontario Mortgage Corporation | 4 | 2 | 4 | 10 |
| Natural Resources | 122 | 17 | 19 | 158 |
| Game and Fish Hearing Board | 1 | | | 1 |
| Northern Affairs | 2 | 2 | 1 | 5 |
| Ontario Northland Transportation Commission | 3 | | | 3 |
| Revenue | 81 | 51 | 43 | 175 |
| Solicitor General | 7 | 3 | 5 | 15 |
| Coroner's Council | 2 | 1 | | 3 |
| Ontario Police Commission | 10 | 3 | 2 | 15 |
| Ontario Provincial Police | 65 | 27 | 18 | 110 |
| Tourism and Recreation | 4 | 1 | 1 | 6 |
| Ontario Lottery Foundation | 2 | 1 | 4 | 7 |
| Transportation and Communications | 113 | 59 | 46 | 218 |
| Licence Suspension Appeal Board | 1 | | | 1 |
| Ontario Highway Transport Board | 2 | | | 2 |
| Treasury and Economics | 1 | 1 | | 2 |
| Ontario Municipal Employees Retirement Board | 16 | 5 | 3 | 24 |

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| <u>Ministries/Agencies</u> | <u>WITHIN JURISDICTION</u> | <u>OUTSIDE JURISDICTION</u> | <u>INFORMATION REQUESTS/ SUBMISSIONS</u> | <u>TOTAL</u> |
|--|--------------------------------|---------------------------------|--|--------------|
| <u>Government of Ontario-Other</u> | | | | |
| Management Board | | | | |
| Civil Service Commission | 8 | 1 | 1 | 2 |
| Grievance Settlement Board | 8 | | 1 | 9 |
| Ontario Public Service Labour Relations Tribunal | | 1 | | 8 |
| Public Service Grievance Board | 1 | | 2 | 1 |
| Niagara Escarpment Commission | 4 | 1 | | 4 |
| Office of the Assembly | | 2 | 5 | 4 |
| Office of the Premier/Cabinet Office | | 9 | 9 | 7 |
| Lieutenant Governor | | 1 | 1 | 18 |
| Office of the Ombudsman | | 2 | 189 | 2 |
| Provincial Auditor | | | 1 | 191 |
| Executive Council | | 1 | 1 | 1 |
| Ontario Government - Other | 6 | 14 | 26 | 2 |
| | <u>4497</u> | <u>1441</u> | <u>1636</u> | <u>7574</u> |
| Government of Ontario Total | | | | |
| <u>Courts</u> | | | | |
| | | 344 | 28 | 372 |
| Total | | <u>344</u> | <u>28</u> | <u>372</u> |

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES | WITHIN | OUTSIDE | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|--|--------------|--------------|---|-------|
| | JURISDICTION | JURISDICTION | | |
| Air Canada | | 1 | | 1 |
| Canadian Penitentiary Services | | 8 | 4 | 12 |
| Federal Penitentiaries | | 19 | 1 | 20 |
| Central Mortgage and Housing | | 24 | 2 | 26 |
| Consumer and Corporate Affairs | | 15 | 9 | 24 |
| Employment and Immigration | | 243 | 21 | 264 |
| Office of the Correctional Investigator | | 1 | | 1 |
| Health and Welfare | | 113 | 34 | 147 |
| Indian Affairs and Northern Development | | 7 | 2 | 9 |
| Justice | | 2 | | 2 |
| National Parole Board | | 9 | 2 | 11 |
| Post Office | | 25 | 3 | 28 |
| Public Works | | 1 | | 1 |
| Revenue Canada - Taxation | | 79 | 21 | 100 |
| Royal Canadian Mounted Police | | 15 | | 15 |
| Transport | | 7 | | 7 |
| Veterans' Affairs | | 14 | 1 | 15 |
| Federal Government - Other | | 102 | 13 | 115 |
| Total | | 685 | 113 | 798 |

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| | <u>WITHIN</u> | | <u>OUTSIDE</u> | <u>INFORMATION REQUESTS/ SUBMISSIONS</u> | <u>TOTAL</u> |
|------------------------------------|---------------------|-------------|---------------------|--|--------------|
| | <u>JURISDICTION</u> | | <u>JURISDICTION</u> | | |
| <u>PRIVATE</u> | | | | | |
| As sociations/Groups | | 71 | | 9 | 80 |
| Children's Aid Society | | 34 | | 3 | 37 |
| Catholic Children's Aid Society | | 1 | | | 1 |
| Complaint Bureaus | | 1 | | | 1 |
| Doctors - Patients | | 60 | | 4 | 64 |
| Hospitals | | 71 | | 5 | 76 |
| Lawyers - Clients | | 186 | | 33 | 219 |
| Law Society of Upper Canada | | 97 | | 95 | 192 |
| College of Physicians and Surgeons | | 8 | | 2 | 10 |
| Private Business | | 716 | | 54 | 770 |
| Private Individual | | 256 | | 20 | 276 |
| Universities - Private | | 20 | | | 20 |
| Member of Parliament | | 1 | | 7 | 8 |
| Private - Other | | 417 | | 167 | 584 |
| Total | | <u>1939</u> | | <u>399</u> | <u>2338</u> |

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| <u>MUNICIPALITIES/LOCAL AUTHORITIES</u> | <u>WITHIN JURISDICTION</u> | <u>OUTSIDE JURISDICTION</u> | <u>INFORMATION REQUESTS/ SUBMISSIONS</u> | <u>TOTAL</u> |
|---|--------------------------------|---------------------------------|--|--------------|
| Municipal Conservation Authority | | 8 | 2 | 10 |
| Municipal Boards of Education | 32 | | | 32 |
| Municipal Garbage | 3 | | | 3 |
| Municipal Governing Body | 16 | | | 16 |
| Municipal Housing | 8 | | 1 | 9 |
| Municipal Hydro | 14 | | 1 | 15 |
| Municipal Parks/Recreation | 2 | | | 2 |
| Municipal Planning Boards | 3 | | | 3 |
| Municipal Police | 14 | 9 | 14 | 163 |
| Municipal Public Health | 4 | | | 4 |
| Municipal Roads | 16 | | 2 | 18 |
| Municipal Sewers | 16 | | 2 | 18 |
| Municipal Taxes | 31 | | 7 | 38 |
| Municipal Transit | 5 | | | 5 |
| Municipal Water | 10 | | | 10 |
| Municipal Welfare | 124 | | 9 | 133 |
| Committees of Adjustment | 3 | | | 3 |
| Municipal - Other | 166 | | 16 | 182 |
| Total | 610 | 54 | | 664 |

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---------------------------|------------------------|-------------------------|---|-----------|
| INTERNATIONAL | | | | |
| | | 9 | | 9 |
| Total | | <u>9</u> | | <u>9</u> |
| OTHER PROVINCES | | | | |
| | | 21 | 5 | 26 |
| Total | | <u>21</u> | <u>5</u> | <u>26</u> |
| NO ORGANIZATION SPECIFIED | | | | |
| | | 30 | 29 | 59 |
| Total | | <u>30</u> | <u>29</u> | <u>59</u> |
| OVERALL TOTAL | 4497 | 5079 | 2264 | 11840* |

*This figure exceeds the number of closed complaints (11,801) because some complaints involved more than one organization.



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